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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SWEET PEOPLE APPAREL, INC. d/b/a
MISS ME, a California corporation, and
RCRV, INC. d/b/a ROCK REVIVAL, a
California corporation, } Case No.: 2:16-cv-00940-TJH-JC
Hon. Terry J. Hatter Jr.

Plaintiffs,

V.

PHOENIX FIBERS, INC., an Arizona corporation, U.S. GENERAL EXPORT, INC., a California corporation, SAC INTERNATIONAL TRADERS, INC., a California corporation, SHAUKAT ALI CHOHAN, an individual, COMAK TRADING, INC., a California corporation, LYDIA EVILSA TERRAZAS CHO, an individual, MYUNG KWON CHO, an individual, TIFFANY ALANA WOLFF, an individual d/b/a MISS V LANE, XYZ COMPANIES 1-10, and JOHN AND JANE DOES 1-10.

Defendants.

Case No.: 2:16-cv-00940-TJH-JC

Hon. Terry J. Hatter Jr.

**PLAINTIFFS' STATEMENT OF
GENUINE DISPUTES OF
MATERIAL FACT**

Hearing Date: January 30, 2017

Hearing Time: Under submission

Place of Hearing: Courtroom 9B
First Street
Courthouse

1 Plaintiffs Sweet People Apparel, Inc. d/b/a MISS ME (“Sweet People”) and
2 RCRV, Inc. d/b/a ROCK REVIVAL (“RCRV”) (collectively, “Plaintiffs”)
3 respectfully submit this statement of genuine disputes of material fact in support of
4 their opposition to defendant Phoenix Fibers, Inc. (“Phoenix Fibers”)’s motion for
5 summary judgment, pursuant to Local rule 56-2.

6 **I. PLAINTIFFS’ STATEMENT OF GENUINE DISPUTES OF**
7 **MATERIAL FACT**

8 **A. Defendant Phoenix Fibers’ Business**

9 1. Defendant Phoenix Fibers is an Arizona-based clothing and textile
10 recycling company that was founded in July 2011. (Appendix of Exhibits (“App. Ex.”)
11 LL; Declaration of Tod Kean (“Kean Decl. (App. Ex. A)”) ¶ 2.) In the textile
12 recycling industry, clothes are recycled in various ways. One way in which clothes are
13 recycled within the clothing recycling industry is to sell them as “credential.”
14 (Declaration of Steven Johnson (“Johnson Decl. (App. Ex. B)”) ¶ 3; Kean Decl. (App.
15 Ex. A) ¶ 6).

16 **Plaintiffs’ Response:** Disputed. Phoenix Fibers was founded “[t]o make
17 shoddy [fiber].” (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ
18 (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)). Specifically,
19 “Phoenix Fibers was founded to provide a stable source of raw material for
20 Bonded Logic’s business of manufacturing denim cloth-based insulation under
21 the name UltraTouch Denim.” (Salzmann Decl. ¶38, Ex. JJ (“*Shredding*
22 *Clothing Nets Big Rewards for Phoenix Fibers*”)). Phoenix Fibers and Bonded
23 Logic are affiliated companies owned by the Kean family. (Salzmann Decl. ¶38,
24 Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”); ¶39, Ex.
25 KK (“*Chandler firm grows; recycles denim material into insulation*”)). Bonded
26 Logic is in the business of manufacturing insulation products, including its
27 flagship product, UltraTouch Denim Insulation. Shoddy fiber created from
28 recycled denim is the raw material that Bonded Logic uses to manufacturer

1 UltraTouch Denim Insulation. (Salzmann Decl. ¶24, Ex. V (SP/RCV005629);
 2 ¶39, Ex. KK (“*Chandler firm grows; recycles denim material into insulation*”);
 3 ¶40, Ex. LL (“*Green Chandler company looks to bask in solar savings*”); ¶41,
 4 Ex. MM (“*Chandler company turns worn-out blue jeans into insulation, more*”)). Prior to launching Phoenix Fibers, Bonded Logic sourced shoddy fiber
 5 from a shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C
 6 (Kean 65:10-66:21)). As Tod Kean explained: “We used to procure our raw
 7 material for the production of insulation from other shredders. But because of
 8 instability in both prices and supply, we decided to open Phoenix to become
 9 vertically integrated by controlling our own source of raw materials.”
 10 (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)). Today, Phoenix Fibers receives clothing “by the truckload”
 11 from various sources for shredding, and processes 900 to a million pounds of
 12 denim and cotton products into shoddy fiber every month. (Salzmann Decl. ¶4,
 13 Ex. B (Johnson 77:2-4); ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)).

14 Phoenix Fibers was not in the business of selling “credential” when the company
 15 was launched in July 2011. That aspect of Phoenix Fibers’ business only came
 16 into existence at a later date. There is no evidence that Phoenix Fibers was
 17 engaged in the sale of credential in November 2011, at the time Plaintiffs and
 18 Phoenix Fibers came to an agreement to convert Plaintiffs’ second-quality
 19 denim products into shoddy fiber. (Salzmann Decl. ¶5, Ex. C (Kean 17:20-
 20 18:9); ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)).

21 2. In the context of recycling clothing and Phoenix Fibers’ industry,
 22 “credential” means clothing or shoes, sold in bulk, and sold by the pound. (Johnson
 23 Decl. (App. Ex. B) ¶ 3; Kean Decl. (App. Ex. A) ¶ 6.)

24 **Plaintiffs’ Response:** Disputed. “Credential” can include things such as

1 “sheets, towels, pillow cases, lamps, … bric-a-brac” (Salzmann Decl. ¶4, Ex. B
 2 (Johnson 29:20-25)), “miscellaneous household items” and “toaster ovens”
 3 (Salzmann Decl. ¶5, Ex. C (Kean 15:17-20)).

4 3. Another way of recycling clothes and textiles is repurposing them by
 5 simply reselling them in consignment or thrift shops. (Declaration of Christopher
 6 Maciel (“Maciel Decl. (App. Ex. C)”) ¶¶ 6-12; App. Ex. I-O; Johnson Decl. (App. Ex.
 7 B) ¶ 4.)

8 **Plaintiffs’ Response:** Disputed to the extent not material to Plaintiffs’ claims,
 9 as the parties’ agreement related to recycling of Plaintiffs’ products into shoddy
 10 fiber. As Ms. Song testified at her deposition: “we would send the inventory
 11 that we needed to -- that we wanted to use as part of our -- one of our green
 12 initiative programs. *Phoenix Fibers would break down the inventory sent to*
 13 *them, shred it and create insulation that they would pass along to Bonded*
 14 *Logic*, who insulated houses in need. (Salzmann Decl. ¶8, Ex. F (Song 67:11-24
 15 (emphasis added)); *see also* 28:10-29:3).

16 4. A third way is to turn the clothes into something else entirely. (Johnson
 17 Decl. (App. Ex. B) ¶ 5; Kean Decl. (App. Ex. A) ¶ 7; Maciel Decl. (App. Ex. C) ¶ 10;
 18 App. Ex. M.)

19 **Plaintiffs’ Response:** Disputed only to the extent this suggests there was any
 20 other way to recycle Plaintiffs’ goods under the parties’ agreement, otherwise
 21 undisputed. Phoenix Fibers was founded to “[t]o make shoddy [fiber].”
 22 (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ (“*Shredding Clothing*
 23 *Nets Big Rewards for Phoenix Fibers*”). Specifically, “Phoenix Fibers was
 24 founded to provide a stable source of raw material for Bonded Logic’s business
 25 of manufacturing denim cloth-based insulation under the name UltraTouch
 26 Denim.” (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards*
 27 *for Phoenix Fibers*”). Phoenix Fibers and Bonded Logic are affiliated
 28 companies owned by the Kean family. (Salzmann Decl. ¶38, Ex. JJ (“*Shredding*

1 *Clothing Nets Big Rewards for Phoenix Fibers*”); ¶39, Ex. KK (“*Chandler firm*
 2 *grows; recycles denim material into insulation*”). Bonded Logic is in the
 3 business of manufacturing insulation products, including its flagship product,
 4 UltraTouch Denim Insulation. Shoddy fiber created from recycled denim is the
 5 raw material that Bonded Logic uses to manufacturer UltraTouch Denim
 6 Insulation. (Salzmann Decl. ¶24, Ex. V (SP/RCV005629); ¶39, Ex. KK
 7 (“*Chandler firm grows; recycles denim material into insulation*”); ¶40, Ex. LL
 8 (“*Green Chandler company looks to bask in solar savings*”); ¶41, Ex. MM
 9 (“*Chandler company turns worn-out blue jeans into insulation, more*”)). Prior
 10 to launching Phoenix Fibers, Bonded Logic sourced shoddy fiber from a
 11 shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C (Kean
 12 65:10-66:21)). As Tod Kean explained: “We used to procure our raw material
 13 for the production of insulation from other shredders. But because of instability
 14 in both prices and supply, we decided to open Phoenix to become vertically
 15 integrated by controlling our own source of raw materials.” (Salzmann Decl.
 16 ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)).
 17 Today, Phoenix Fibers receives clothing “by the truckload” from various sources
 18 for shredding, and processes 900 to a million pounds of denim and cotton
 19 products into shoddy fiber every month. (Salzmann Decl. ¶4, Ex. B (Johnson
 20 77:2-4); ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix*
 21 *Fibers*”)).

22 5. Phoenix Fibers is solely a clothing and textile recycling company that
 23 engages in three types of recycling. First, Phoenix Fibers accepts donations of
 24 clothing that it then sells, by the pound and in bulk, as credential. Second, Phoenix
 25 Fibers accepts donations of clothing, converts that clothing through a proprietary
 26 shredding process into shoddy or filler fiber, and then sells it to companies that use
 27 this fiber for various purposes (e.g., for housing, automotive, and appliance
 28 insulation). Third, *for a fee*, Phoenix Fibers agrees to destroy certain clothing items

1 and produces a certificate of destruction to the customer. (Johnson Decl. (App. Ex.
 2 B) ¶ 6; Kean Decl. (App. Ex. A) ¶ 8.)

3 **Plaintiffs' Response:** Disputed. Phoenix Fibers was founded “[t]o make
 4 shoddy [fiber].” (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ
 5 (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”). Specifically,
 6 “Phoenix Fibers was founded to provide a stable source of raw material for
 7 Bonded Logic’s business of manufacturing denim cloth-based insulation under
 8 the name UltraTouch Denim.” (Salzmann Decl. ¶38, Ex. JJ (“*Shredding
 9 Clothing Nets Big Rewards for Phoenix Fibers*”). Phoenix Fibers and Bonded
 10 Logic are affiliated companies owned by the Kean family. (Salzmann Decl. ¶38,
 11 Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”); ¶39, Ex.
 12 KK (“*Chandler firm grows; recycles denim material into insulation*”)). Bonded
 13 Logic is in the business of manufacturing insulation products, including its
 14 flagship product, UltraTouch Denim Insulation. Shoddy fiber created from
 15 recycled denim is the raw material that Bonded Logic uses to manufacturer
 16 UltraTouch Denim Insulation. (Salzmann Decl. ¶24, Ex. V (SP/RCV005629);
 17 ¶39, Ex. KK (“*Chandler firm grows; recycles denim material into insulation*”);
 18 ¶40, Ex. LL (“*Green Chandler company looks to bask in solar savings*”); ¶41,
 19 Ex. MM (“*Chandler company turns worn-out blue jeans into insulation,
 20 more*”)). Prior to launching Phoenix Fibers, Bonded Logic sourced shoddy fiber
 21 from a shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C
 22 (Kean 65:10-66:21)). As Tod Kean explained: “We used to procure our raw
 23 material for the production of insulation from other shredders. But because of
 24 instability in both prices and supply, we decided to open Phoenix to become
 25 vertically integrated by controlling our own source of raw materials.”
 26 (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for
 27 Phoenix Fibers*”)). Today, Phoenix Fibers receives clothing “by the truckload”
 28 from various sources for shredding, and processes 900 to a million pounds of

1 denim and cotton products into shoddy fiber every month. (Salzmann Decl. ¶4,
2 Ex. B (Johnson 77:2-4); ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for*
3 *Phoenix Fibers*”)). Phoenix Fibers was not in the business of selling
4 “credential” when the company was launched in July 2011. That aspect of
5 Phoenix Fibers’ business only came into existence at a later date. There is no
6 evidence that Phoenix Fibers was engaged in the sale of credential in November
7 2011, at the time Plaintiffs and Phoenix Fibers came to an agreement to convert
8 all of Plaintiffs’ second-quality denim products into shoddy fiber. (Salzmann
9 Decl. ¶5, Ex. C (Kean 17:20-18:9); ¶38, Ex. JJ (“*Shredding Clothing Nets Big*
10 *Rewards for Phoenix Fibers*”)).

11 6. Tod Kean is the president and an owner of Phoenix Fibers. (Kean Decl.
12 (App. Ex. A) ¶ 1.)

13 **Plaintiffs’ Response:** Undisputed. Tod Kean is also the CEO of Phoenix
14 Fibers, and the Secretary and co-founder of Bonded Logic. (Salzmann Decl. ¶5,
15 Ex. C (Kean 58:11-16)).

16 7. Steven Johnson is the current plant manager of Phoenix Fibers, and has
17 been since around September 2013. (Johnson Decl. (App. Ex. B) ¶ 1; Kean Decl.
18 (App. Ex. A) ¶ 10.)

19 **Plaintiffs’ Response:** Undisputed.

20 8. Prior to Mr. Johnson being plant manager, a person named Matt Graham
21 was the plant manager, as well as the acting general manager, during the startup phase
22 of Phoenix Fibers. (Kean Decl. (App. Ex. A) ¶ 10.)

23 **Plaintiffs’ Response:** Undisputed.

24 9. Mr. Graham started working for Phoenix Fibers in 2011, when the
25 business started, and left in 2013. (Kean Decl. (App. Ex. A) ¶ 10.)

26 **Plaintiffs’ Response:** Undisputed.

1 **B. Plaintiff Sweet People Apparel, Inc. (“Sweet People”)**

2 10. Plaintiff Sweet People sells certain products, including jeans and cutoff
3 denim shorts, under the Miss Me brand name. (First Amended Complaint (“Complaint
4 (App. Ex. H)” ¶ 17.)

5 **Plaintiffs’ Response:** Undisputed (although Phoenix Fibers’ citation does not
6 support this statement).

7 11. Miss Me brand jeans cost a consumer approximately \$100 at retail.
8 (Maciel Decl. (App. Ex. C) ¶ 36; App Ex. MM.)

9 **Plaintiffs’ Response:** Undisputed.

10 12. Lisa Song was an employee of Sweet People from 2009 to February 2014
11 and worked as a human resources manager during her entire tenure at Sweet People.
12 (Deposition of Lisa Song (“Song Depo. (App. Ex. D)”) 18:19-19:16; App. Ex. P.)

13 **Plaintiffs’ Response:** Disputed. Lisa Song held the title of Human Resources
14 Manager at Sweet People between 2009 and February 2014. (Salzmann Decl.
15 ¶8, Ex. F (Song 21:9-12)). Although Ms. Song was on Sweet People’s payroll,
16 she was considered an employee of both Sweet People and RCRV, and her time
17 was allocated between those two companies, and a third related entity called
18 Deodar Brands, the proprietor of the MEK DENIM jeanswear brand. (Salzmann
19 Decl. ¶6, Ex. D (Kim 41:18-42:1; 58:24-59:3; *see also* 105:24-106:16); Kim
20 Decl. ¶¶8-9; Choi Decl. ¶8).

21 13. Lilly Kim is the General Counsel for Sweet People and has been since
22 2010. (Rule 30(b)(6) Deposition of Lilly Kim “Rule 30(b)(6) Depo. (Kim) (App. Ex.
23 E)” 31:24-32:7.)

24 **Plaintiffs’ Response:** Disputed. Ms. Kim served as the General Counsel of
25 Sweet People and RCRV from approximately April 2010 to October 2016.
26 Since that time, Ms. Kim has continued to oversee Plaintiffs’ legal matters as an
27 outside consultant. (Kim Decl. ¶ 1).

1 14. Felipe Salgado is an employee of Sweet People and began working for
2 Sweet People in October 2004. (Rule (30)(b)(6) Deposition of Felipe Salgado (“Rule
3 30(b)(6) Depo. (Salgado) (App. Ex. F)” 21:20-22:9; 24:1-15.)

4 **Plaintiffs’ Response:** Undisputed. While Mr. Salgado has been on RCRV’s
5 payroll since 2008, he, like Ms. Song, is considered an employee of both Sweet
6 People and RCRV, and his time is allocated between those two companies, as
7 evidenced by his continuing responsibilities relating to the coordination and
8 shipment of second-quality MISS ME (and ROCK REVIVAL products) to
9 Phoenix Fibers for destruction. (Salzmann Decl. ¶7, Ex. E (Salgado 21:20-22;
10 24:10-15; 31:8-33:21)).

11 C. **Plaintiff RCRV, Inc. (“RCRV”)**

12 15. Mr. Salgado was responsible for merchandise shipping at Sweet People
13 from 2013 to the present time. (Rule 30(b)(6) Depo. (Salgado) (App. Ex. F) 21:20-
14 28:15.)

15 **Plaintiffs’ Response:** Disputed. Since October 2013, Mr. Salgado’s only
16 responsibilities relating to Sweet People’s warehouse logistics were the
17 coordination and shipment of second-quality MISS ME (and ROCK REVIVAL
18 products) to Phoenix Fibers for destruction. (Salzmann Decl. ¶7, Ex. E (Salgado
19 24:10-15; 31:8-33:21)).

20 16. Plaintiff RCRV is a denim and apparel company that was formed in 2007.
21 (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 102:22-103:1; Complaint (App. Ex. H) ¶ 17.)

22 **Plaintiffs’ Response:** Undisputed.

23 17. RCRV sells certain products under its Rock Revival brand name.
24 (Complaint (App. Ex. H) ¶ 17.)

25 **Plaintiffs’ Response:** Undisputed.

26 18. Rock Revival brand jeans cost a consumer approximately between \$150
27 and \$200 at retail. (Maciel Decl. (App. Ex. C) ¶ 37; App Ex. NN.)

28 **Plaintiffs’ Response:** Undisputed.

1 19. In addition to being the General Counsel for Sweet People, Lilly Kim is
2 also the General Counsel for RCRV and has been since 2010. (Rule 30(b)(6) Depo.
3 (Kim) (App. Ex. E) 31:24-32:7.)

4 **Plaintiffs' Response:** Disputed. Ms. Kim served as the General Counsel of
5 Sweet People and RCRV from approximately April 2010 to October 2016.
6 Since that time, Ms. Kim has continued to oversee Plaintiffs' legal matters as an
7 outside consultant. (Kim Decl. ¶ 1).

8 20. In addition to being an employee of Sweet People, Mr. Salgado is an
9 employee of RCRV and has been since 2008. (Rule 30(b)(6) Depo. (Salgado) (App.
10 Ex. F) 15:19-22; 18:2-24; 21:20-28:15.) At RCRV, Mr. Salgado oversees customer
11 service, the shipping department, and the warehouse. (Rule 30(b)(6) Depo.
12 (Salgado) (App. Ex. F) 17:25-18:24.)

13 **Plaintiffs' Response:** Undisputed. While Mr. Salgado has been on RCRV's
14 payroll since 2008, he, like Ms. Song, is considered an employee of both Sweet
15 People and RCRV, and his time is allocated between those two companies, as
16 evidenced by his continuing responsibilities relating to the coordination and
17 shipment of second-quality MISS ME (and ROCK REVIVAL products) to
18 Phoenix Fibers for destruction. (Salzmann Decl. ¶7, Ex. E (Salgado 21:20-22;
19 24:10-15; 31:8-33:21)).

20 21. Ms. Song was never employed by RCRV. (Song Depo. (App. Ex. D)
21 18:19-19:16; 21:9-12; App. Ex. P).

22 **Plaintiffs' Response:** Disputed. Lisa Song held the title of Human Resources
23 Manager at Sweet People between 2009 and February 2014. (Salzmann Decl.
24 ¶8, Ex. F (Song 21:9-12)). Although Ms. Song was on Sweet People's payroll,
25 she was considered an employee of both Sweet People and RCRV, and her time
26 was allocated between those two companies, and a third related entity called
27 Deodor Brands, the proprietor of the MEK DENIM jeanswear brand. (Salzmann
28

1 Decl. ¶6, Ex. D (Kim 41:18-42:1; 58:24-59:3; *see also* 105:24-106:16); Kim
2 Decl. ¶¶8-9; Choi Decl. ¶8).

3 22. Further, Ms. Song never negotiated any contracts on behalf of RCRV.
4 (Song Depo. (App. Ex. D) 19:19-20:12).

5 **Plaintiffs' Response:** Disputed. Ms. Song, acting on behalf of Plaintiffs and
6 under the direction of Ms. Kim, entered into an agreement with Phoenix Fibers
7 relating to the donation of second-quality MISS ME and ROCK REVIVAL
8 denim products, which were to solely be destroyed and converted into shoddy
9 fiber. (Salzmann Decl. ¶6, Ex. D (Kim 14:1-9); ¶8, Ex. F (Song 24:4-9); Kim
10 Decl. ¶9; Choi Decl. ¶8).

11 23. There is no evidence Ms. Song ever represented herself as an employee or
12 agent of RCRV during any conversation that she had with anyone from Phoenix
13 Fibers.

14 **Plaintiffs' Response:** Disputed. Ms. Song was considered an employee of both
15 Sweet People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 41:18-42:1; 58:24-
16 59:3; *see also* 105:24-106:16); Kim Decl. ¶¶8-9). Ms. Song, acting on behalf of
17 both Sweet People and RCRV and under the direction of Ms. Kim (the then-
18 General Counsel of both companies), entered into an agreement with Phoenix
19 Fibers relating to the donation of both second-quality MISS ME and ROCK
20 REVIVAL denim products, which were solely to be destroyed and converted
21 into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 14:1-9); ¶8, Ex. F (Song
22 24:4-9); Kim Decl. ¶¶8-9, 15; Choi Decl. ¶8). Moreover, the parties' course of
23 conduct between November 2011 and September 2015—during which time
24 Plaintiffs' delivered hundreds of thousands of pounds of ROCK REVIVAL—
25 confirm that RCRV was a party to the agreement negotiated by Ms. Song,
26 further indicating that she represented RCRV in the negotiation of the parties'
27 agreement.

1 **D. The Interaction Between Sweet People, RCRV, and Phoenix Fibers**

2 24. Plaintiffs viewed Phoenix Fibers' website prior to shipping any clothing
 3 to Phoenix Fibers. (Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)

4 **Plaintiffs' Response:** Disputed. Plaintiffs' prior statement that "one or more
 5 RCRV and/or Sweet People Apparel, Inc. employee visited the Phoenix Fibers
 6 website" before Plaintiffs delivered any products to Phoenix Fibers for recycling
 7 into shoddy fiber was based on Plaintiffs then-understanding that Ms. Song had
 8 visited the Phoenix Fibers website at or around the time she was negotiating the
 9 terms of the parties' agreement with Mr. Graham. Ms. Song, however, recently
 10 testified that she has no specific recollection of visiting the Phoenix Fibers
 11 website. (Salzmann Decl. ¶8, Ex. F (Song 47:20-48:17)). Moreover, Tod Kean
 12 conceded at his deposition that Phoenix Fibers *did not* have an operational
 13 website when the company launched in July 2011, and further testified that he
 14 did not know when the Phoenix Fibers website went live, stating that he "would
 15 want to check the dates on the [Wayback] machine." (Salzmann Decl. ¶5, Ex. C
 16 (Kean 101:5-25); ¶42, Ex. NN (printouts of Wayback Machine screen capture)).
 17 Accordingly, there is no competent evidence that Phoenix Fibers even had an
 18 operational website in or around November 2011.

19 25. Since its inception, Phoenix Fibers' website homepage has stated,
 20 "Phoenix Fibers collects and recycles textiles in a variety of ways. We maintain a
 21 zero waste philosophy whenever feasible. The items we do not use in our
 22 shredding process are resold to other recycling companies." (Kean Decl. (App. Ex.
 23 A) ¶ 9; App. Ex. T; Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 166:3-16.)

24 **Plaintiffs' Response:** Disputed. Phoenix Fibers has produced no evidence to
 25 substantiate Tod Kean's claim that the phxfibers.com website has been active
 26 "[s]ince [the company's] inception" in July 2011. (Kean Decl. ¶9). Tod Kean
 27 conceded at his deposition that Phoenix Fibers *did not* have an operational
 28 website when the company launched in July 2011, and further testified that he

1 did not know when the Phoenix Fibers website went live, stating that he “would
 2 want to check the dates on the [Wayback] machine.” (Salzmann Decl. ¶5, Ex. C
 3 (Kean 101:5-25)). Had Mr. Kean checked the Wayback Machine, he would
 4 have learned that the first screen capture of the phxfibers.com website is from
 5 September 13, 2012, more than a year after Phoenix Fibers commenced its
 6 business. (Salzmann Decl. ¶42, Ex. NN (printouts of Wayback Machine screen
 7 capture)). Moreover, Phoenix Fibers did not “purchase” Plaintiffs’ products,
 8 and when Mr. Kean was specifically asked how this statement—“The items we
 9 do not use in our shredding process are resold to other recycling
 10 companies”—which refers to the resale or reselling of products, related Phoenix
 11 Fibers’ sale of Plaintiffs’ products, Mr. Kean was unable to identify any first or
 12 initial “sale” of products by Plaintiffs that preceded Phoenix Fibers’ “resale.”
 13 (Salzmann Decl. ¶5, Ex. C (Kean 102:1-23)).

14 26. Plaintiffs allege that in 2011 they entered into a contract with Phoenix
 15 Fibers (the “Alleged Contract”). (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 14:1-9;
 16 18:4-19:3; 28:12-29:7.) The Alleged Contract is not a written contract. (*Id.* at 32:17-
 17 34:12; Song Depo. (App. Ex. D) 74:19-75:15; App. Ex. FF.)

18 **Plaintiffs’ Response:** Not disputed that there is no single writing consisting of
 19 a written contract between the parties, but disputed to the extent intended to
 20 suggest there are no writings that make reference to any of the terms of the
 21 parties’ agreement. In fact, contemporaneous written communications between
 22 the parties memorialize key material terms of the parties’ agreement, including,
 23 without limitation, Phoenix Fibers’ agreement to shred (and thereby destroy) all
 24 goods donated to it by Plaintiffs:

25 • On November 4, 2011, Mr. Graham sent Ms. Song an email explaining
 26 Phoenix Fibers’ shredding services, and explaining that “[i]f necessary,
 27 [Phoenix Fibers] can remove the tags, buttons and zippers. There is no
 28 charge for our recycling service.” (Salzmann Decl. ¶16, Ex. N

(SP/RCRV005538-5539) (emphasis added)). It would only be necessary to remove “the tags, buttons and zippers” from Plaintiffs products if the products were being recycled into shoddy fiber, as the parties contemplated. (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”) (explaining that the first step in the shredding process is “a proprietary process that removes all buttons, zippers and tags”)).

- On November 15, 2015, two weeks prior to Plaintiffs’ delivery of their first shipment of products to Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent an email to Ms. Song explaining “[t]here’s not much else needed. ***We will receive the material, schedule it for destruction and away we go!*** I’ll call you this morning to confirm this email.” (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).
- December 5, 2011, a week after Plaintiffs delivered their first shipment of products Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent Ms. Song an email explaining what happens to Plaintiffs’ products: “***The product we receive may be recycled into any number of products. This could range from house, automobile or appliance insulation to prison mattresses.... There is also a certain portion that cannot be used, such as metal pieces in the buttons and zippers. These are removed and recycled separately.***” (Salzmann Decl. ¶20, Ex. R (SP/RCRV005583-5584) (emphasis added)).
- A few months later in March 2012, Mr. Graham reaffirmed this process in an email to Ms. Song stating: “***Phoenix Fibers converts the jeans into fiber that gets sent to our affiliate company, Bonded Logic*** which in turn, manufactures the end products.” (Salzmann Decl. ¶24, Ex. V (SP/RCRV005629) (emphasis added)).

1 • Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms.
 2 Song following up on their recent in-person meeting stating: “*Some of*
 3 *our new machinery I told you about has just arrived. Once we have it*
 4 *set up and running, I will send you a video of us running your jeans.*”
 5 (Salzmann Decl. ¶27, Ex. Y (SP/RCV005640) (emphasis added)).

6 27. Ms. Kim and Plaintiffs allege, but cannot prove, that, pursuant to the
 7 terms of the Alleged Contract, Phoenix Fibers was obligated to recycle all products
 8 donated to Phoenix Fibers by Plaintiffs. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E)
 9 26:1-6; 197:18-25; App. Ex. V-W.) Further, Ms. Kim and Plaintiffs assert, but
 10 cannot prove, that Plaintiffs *explicitly* placed a requirement on Phoenix Fibers to
 11 destroy all items that Plaintiffs donated, and that the Alleged Contract required
 12 Phoenix Fibers to destroy all items that Plaintiffs donated. (Rule 30(b)(6) Depo.
 13 (Kim) (App. Ex. E) 26:1-6; 197:18-25; 26:20.-29:14; App. Ex. V-W.)

14 **Plaintiffs’ Response:** Disputed. Ms. Kim saw written communications
 15 between Ms. Song and Mr. Graham wherein Mr. Graham specifically
 16 represented that Phoenix Fibers would destroy all of Plaintiffs’ second-quality
 17 denim products and convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D
 18 (Kim 28:14-25); Kim Decl. ¶¶10-11). As Ms. Kim testified, “[w]e did require
 19 that the items be destroyed and recycled” (Salzmann Decl. ¶6, Ex. D (Kim
 20 27:20-28:1)). Based on her contemporaneous discussions with Ms. Song
 21 regarding Ms. Song’s conversations with Mr. Graham, Ms. Kim understood that
 22 Plaintiffs had conditioned their agreement to provide Phoenix Fibers with their
 23 second-quality MISS ME and ROCK REVIVAL denim products on Phoenix
 24 Fibers’ agreement to convert all such products into shoddy fiber. (Salzmann
 25 Decl. ¶6, Ex. D (Kim 28:14-29:4); L. Kim Decl. ¶¶10-12; *see also* Choi Decl.
 26 ¶8). Moreover, the contemporaneous written communications between the
 27 parties memorialize material terms of the parties’ agreement, which include
 28 destruction:

- On November 4, 2011, Mr. Graham sent Ms. Song an email explaining Phoenix Fibers' shredding services, and explaining that "*[i]f necessary, [Phoenix Fibers] can remove the tags, buttons and zippers. There is no charge for our recycling service.*" (Salzmann Decl. ¶16, Ex. N (SP/RCRV005538-5539) (emphasis added)). It would only be necessary to remove "the tags, buttons and zippers" from Plaintiffs products if the products were being recycled into shoddy fiber, as the parties contemplated. (Salzmann Decl. ¶38, Ex. JJ ("Shredding Clothing Nets Big Rewards for Phoenix Fibers") (explaining that the first step in the shredding process is "a proprietary process that removes all buttons, zippers and tags")).
- On November 15, 2015, two weeks prior to Plaintiffs' delivery of their first shipment of products to Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent an email to Ms. Song explaining "[t]here's not much else needed. *We will receive the material, schedule it for destruction and away we go!* I'll call you this morning to confirm this email." (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).
- December 5, 2011, a week after Plaintiffs delivered their first shipment of products Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent Ms. Song an email explaining what happens to Plaintiffs' products: "*The product we receive may be recycled into any number of products. This could range from house, automobile or appliance insulation to prison mattresses.... There is also a certain portion that cannot be used, such as metal pieces in the buttons and zippers. These are removed and recycled separately.*" (Salzmann Decl. ¶20, Ex. R (SP/RCRV005583-5584) (emphasis added)).

- 1 • A few months later in March 2012, Mr. Graham reaffirmed this process in
2 an email to Ms. Song stating: “*Phoenix Fibers converts the jeans into*
3 *fiber that gets sent to our affiliate company, Bonded Logic* which in turn,
4 manufactures the end products.” (Salzmann Decl. ¶24, Ex. V
5 (SP/RCRV005629) (emphasis added)).
- 6 • Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms.
7 Song following up on their recent in-person meeting stating: “*Some of*
8 *our new machinery I told you about has just arrived. Once we have it*
9 *set up and running, I will send you a video of us running your jeans.*”
10 (Salzmann Decl. ¶27, Ex. Y (SP/RCRV005640) (emphasis added)).

11 28. Plaintiffs’ 30(b)(6) witness regarding negotiation of, and entry into, the
12 Alleged Contract testified that the Alleged Contract was negotiated and entered into
13 by the human resource manager, Ms. Song, on behalf of Plaintiffs, as opposed to
14 Ms. Kim, Plaintiffs’ General Counsel or anyone else. (Rule 30(b)(6) Depo. (Kim)
15 (App. Ex. E) 14:1-9; 18:4-19:15; 31:24-32:7; 175:25-176:3.) Plaintiffs’ 30(b)(6)
16 witness further testified that Ms. Song negotiated the Alleged Contract with Mr.
17 Graham and then entered into the Alleged Contract with Mr. Graham, a
18 representative of Phoenix Fibers. (*Id.* at 14:1-9; 18:4-19:3; 28:12-29:4.)

19 Plaintiffs’ Response: Disputed. Ms. Song, acting on behalf of Plaintiffs and
20 under the direction of Ms. Kim, entered into an agreement with Phoenix Fibers
21 relating to the donation of second-quality MISS ME and ROCK REVIVAL
22 denim products, which were all to be destroyed and converted into shoddy fiber.
23 (Salzmann Decl. ¶6, Ex. D (Kim 14:1-9); ¶8, Ex. F (Song 24:4-9); Kim Decl.
24 ¶¶8-12). Eric Choi, Plaintiffs’ then-CEO approved the terms of the parties’
25 agreement. (Choi Decl. ¶ 8).

26 29. To the extent there is a contract, the Alleged Contract was entered into
27 prior to November 7, 2011. (Song Depo. (App. Ex. D) 57:14-60:3; 62:8-17; 82:1783:7;
28 Maciel Decl. (App. Ex. C) ¶ 28; App. Ex. EE).

1 **Plaintiffs' Response:** Disputed. The parties' agreement was finalized prior to
 2 the first delivery of denim products to Phoenix Fibers for recycling into shoddy
 3 fiber on November 29, 2011. Phoenix Fibers is desperately attempting to ignore
 4 Mr. Graham's November 15, 2015 email to Ms. Song—two weeks prior to
 5 Plaintiffs' delivery of their first shipment of products to Phoenix Fibers for
 6 recycling into shoddy fiber—in which Mr. Graham states “[t]here's not much
 7 else needed. ***We will receive the material, schedule it for destruction and away***
 8 ***we go!*** I'll call you this morning to confirm this email.” (Salzmann Decl. ¶18,
 9 Ex. P (SP/RCRV005545) (emphasis added)). Further, try as it may, even if the
 10 parties' agreement had been reached on November 7, 2011, Mr. Graham's
 11 November 15, 2011 email merely serves to confirm that which the parties had
 12 already agreed to—that Phoenix Fibers would only recycle Plaintiffs' products
 13 into shoddy fiber.

14 30. Plaintiffs have no evidence that Ms. Kim, the General Counsel, has any
 15 personal knowledge of the formation of, or terms of, the Alleged Contract.

16 **Plaintiffs' Response:** Undisputed. Throughout her discussions with Phoenix
 17 Fibers, Ms. Song reported back to Ms. Kim, Mr. Choi and Steve Kim, Plaintiffs'
 18 then-COO, her superiors who also worked for both Sweet People and RCRV.
 19 (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24; 20:1-11; 20:25-21:3; 43:8-19); ¶15,
 20 Ex. M (SP/RCRV005532-5533), ¶16, Ex. N (SP/RCRV005538-5539), ¶17, Ex.
 21 O (SP/RCRV005542-5543); Kim Decl. ¶9; Choi Decl. ¶8). Moreover, Ms. Kim
 22 saw written communications between Ms. Song and Mr. Graham wherein Mr.
 23 Graham specifically represented that Phoenix Fibers would only destroy
 24 Plaintiffs' second-quality denim products and convert them into shoddy fiber
 25 (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that
 26 “[w]e did require that the items be destroyed and recycled” (Salzmann Decl. ¶6,
 27 Ex. D (Kim 27:20-28:1)). Based on her contemporaneous discussions with Ms.
 28 Song regarding Ms. Song's negotiations with Mr. Graham, Ms. Kim understood

1 that Plaintiffs had conditioned their agreement to provide Phoenix Fibers with
 2 their second-quality MISS ME and ROCK REVIVAL denim products on
 3 Phoenix Fibers' agreement to convert all such products into shoddy fiber.
 4 (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); Kim Decl. ¶10; *see also* Choi
 5 Decl. ¶8).

6 31. Ms. Kim did not have any communications of any kind with anyone from
 7 Phoenix Fibers until 2015, years after the alleged formation of the Alleged Contract.
 8 (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 19:4-15; 31:24-32:7.)

9 **Plaintiffs' Response:** Disputed to the following extent. While Ms. Kim did not
 10 have any such direct communications until 2015, throughout her discussions
 11 with Phoenix Fibers, Ms. Song reported back to Ms. Kim, Mr. Choi and Steve
 12 Kim, Plaintiffs' then-COO, her superiors who also worked for both Sweet
 13 People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24; 20:1-11; 20:25-
 14 21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N
 15 (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim Decl. ¶9;
 16 Choi Decl. ¶8). Moreover, Ms. Kim saw written communications between Ms.
 17 Song and Mr. Graham wherein Mr. Graham represented that Phoenix Fibers
 18 would destroy Plaintiffs' second-quality denim products and convert them into
 19 shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and
 20 testified that “[w]e did require that the items be destroyed and recycled”
 21 (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)). Based on her contemporaneous
 22 discussions with Ms. Song regarding Ms. Song's negotiations with Mr. Graham,
 23 Ms. Kim understood that Plaintiffs had conditioned their agreement to provide
 24 Phoenix Fibers with their second-quality MISS ME and ROCK REVIVAL
 25 denim products only based on Phoenix Fibers' agreement to convert all such
 26 products into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); Kim
 27 Decl. ¶10; *see also* Choi Decl. ¶8). In addition, based on her contemporaneous
 28 understanding of Ms. Song's oral and written communications with Phoenix

1 Fibers, namely, Mr. Graham's representation that Phoenix Fibers would
 2 "destroy" Plaintiffs' products and convert them into shoddy fiber, and his
 3 statement that Phoenix Fibers did not require a writing to memorialize the
 4 parties' understanding, Ms. Kim was satisfied that a written agreement with
 5 Phoenix Fibers was not necessary. (Salzmann Decl. ¶6, Ex. D (Kim 34:4-12;
 6 37:22-38:10); Kim Decl. ¶12).

7 32. Ms. Kim never spoke to or communicated with Mr. Graham about
 8 anything. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 19:4-15; 175:25-176:3.)

9 **Plaintiffs' Response:** Disputed to the following extent. While Ms. Kim did not
 10 have any direct communications with Mr. Graham, throughout her discussions
 11 with Phoenix Fibers, Ms. Song reported back to Ms. Kim, Mr. Choi and Steve
 12 Kim, Plaintiffs' then-COO, her superiors who also worked for both Sweet
 13 People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24; 20:1-11; 20:25-
 14 21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N
 15 (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim Decl. ¶9;
 16 Choi Decl. ¶8). Moreover, Ms. Kim saw written communications between Ms.
 17 Song and Mr. Graham wherein Mr. Graham represented that Phoenix Fibers
 18 would destroy Plaintiffs' second-quality denim products and convert them into
 19 shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and
 20 testified that "[w]e did require that the items be destroyed and recycled"
 21 (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)). Based on her contemporaneous
 22 discussions with Ms. Song regarding Ms. Song's negotiations with Mr. Graham,
 23 Ms. Kim understood that Plaintiffs had conditioned their agreement to provide
 24 Phoenix Fibers with their second-quality MISS ME and ROCK REVIVAL
 25 denim products only based on Phoenix Fibers' agreement to convert all such
 26 products into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); Kim
 27 Decl. ¶10; *see also* Choi Decl. ¶8). In addition, based on her contemporaneous
 28 understanding of Ms. Song's oral and written communications with Phoenix

1 Fibers, namely, Mr. Graham's representation that Phoenix Fibers would
 2 "destroy" Plaintiffs' products and convert them into shoddy fiber, and his
 3 statement that Phoenix Fibers did not require a writing to memorialize the
 4 parties' understanding, Ms. Kim was satisfied that a written agreement with
 5 Phoenix Fibers was not necessary. (Salzmann Decl. ¶6, Ex. D (Kim 34:4-12;
 6 37:22-38:10); Kim Decl. ¶12).

7 33. Plaintiffs have no evidence that Mr. Salgado has personal knowledge of
 8 the terms of the Alleged Contract between Phoenix Fibers.

9 **Plaintiffs' Response:** Undisputed.

10 34. Mr. Salgado does not remember ever speaking to former Phoenix Fibers
 11 employee, Mr. Graham. (Rule 30(b)(6) Depo. (Salgado) (App. Ex. F) 71:172:4). Mr.
 12 Salgado never spoke to current Phoenix Fibers employee Mr. Johnson about any
 13 obligations between Phoenix Fibers and Plaintiffs. (*Id.* at 73:19-74:2.)

14 **Plaintiffs' Response:** Disputed to the following extent. While he did not have
 15 any such direct communications, Mr. Salgado understood that Plaintiffs'
 16 products were delivered to Phoenix Fibers for destruction. (Salzmann Decl. ¶7,
 17 Ex. E (Salgado 31:8-25; 35:16-25; 99:14-19)). Moreover, Mr. Johnson's
 18 communications with Mr. Salgado confirmed that Phoenix Fibers was
 19 destroying Plaintiffs' products. Indeed, on September 11, 2015, Mr. Johnson
 20 wrote the following to Mr. Salgado: "The last 3 loads have been mostly Miss
 21 Me, due to the high metal content we 'salt' Miss me into our blend. This insures
 22 that we do not over burden our metal counter measures. ***The Rocks [Revivals]***
 23 ***have significantly less metal & we can destroy / convert those quickly.***"

24 (Salzmann Decl. ¶28, Ex. Z (SP/RCV001006-1009) (emphasis added)).

25 35. No one ever told Mr. Salgado that there was a contract between
 26 Plaintiffs and Phoenix Fibers. (Rule 30(b)(6) Depo. (Salgado)(App. Ex. F) 90:5-12.)

27 **Plaintiffs' Response:** Disputed to the following extent. While he did not have
 28 any such direct communication, Mr. Salgado understood that Plaintiffs' products

were delivered to Phoenix Fibers for destruction. (Salzmann Decl. ¶7, Ex. E (Salgado 31:8-25; 35:16-25; 99:14-19)). Moreover, Mr. Johnson's communications with Mr. Salgado confirmed that Phoenix Fibers was destroying Plaintiffs' products. Indeed, on September 11, 2015, Mr. Johnson wrote the following to Mr. Salgado: "The last 3 loads have been mostly Miss Me, due to the high metal content we 'salt' Miss me into our blend. This insures that we do not over burden our metal counter measures. ***The Rocks [Revivals] have significantly less metal & we can destroy / convert those quickly.***" (Salzmann Decl. ¶28, Ex. Z (SP/RCRV001006-1009) (emphasis added)).

36. Ms. Song, the only person who spoke to Phoenix Fibers regarding the Alleged Contract, cannot recall whether any part of the Alleged Contract was based on conversations she had with Phoenix Fibers. (Song Depo. (App. Ex. D) 61:21-62:1.)

Plaintiffs' Response: Disputed. Ms. Song's testimony was: "I can't recall the origins of what I recall, whether it was a phone [call] or a[n] e-mail." (Salzmann Decl. ¶8, Ex. F (Song 61:12-19; *see also* 35:13-18; 72:20-73:2)). In fact, Ms. Song testified at length that the parties' agreement was based in significant part on conversations and negotiations she had with Mr. Graham. (Salzmann Decl. ¶8, Ex. F (Song 31:8-24; 32:14-33:1; 33:9-17)).

37. Plaintiffs do not know if, and cannot prove that, during verbal discussions, Ms. Song ever required Plaintiffs to destroy all items that they donated to Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-16; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:552:3; 52:11-17; Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ).

Plaintiffs' Response: Disputed. Phoenix Fibers mischaracterizes Ms. Song's testimony. In the portion referred to, Ms. Song's testimony was: "I can't recall the origins of what I recall, whether it was a phone [call] or a[n] e-mail." (Salzmann Decl. ¶8, Ex. F (Song 61:12-19; *see also* 35:13-18; 72:20-73:2)). In

fact, Ms. Song testified at length that the parties' agreement was based in significant part on conversations and negotiations she had with Mr. Graham. Salzmann Decl. ¶8, Ex. F (Song 31:8-24; 32:14-33:1; 33:9-17)). Further, Ms. Song has a clear recollection and understanding that Phoenix Fibers agreed to shred (*i.e.*, destroy) all of Plaintiffs' products into shoddy fiber. (Salzmann Decl. ¶8, Ex. F (Song 67:11-24; 28:10-29:3)). Moreover, contemporaneous written communications between the parties memorialize key material terms of the parties' agreement, including, without limitation, Phoenix Fibers' agreement to shred (and thereby destroy) all goods donated to it by Plaintiffs. (Salzmann Decl. ¶16, Ex. N (SP/RCRV005538-5539); ¶18, Ex. P (SP/RCRV005545); ¶20, Ex. R (SP/RCRV005583-5584); ¶24, Ex. V (SP/RCRV005629); ¶27, Ex. Y (SP/RCRV005640)).

38. Ms. Song does not recall any oral communications in which she required Plaintiffs to destroy all the items that they donated to Phoenix Fibers. (Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5-52:3; 52:11-17.)

Plaintiffs' Response: Disputed. Phoenix Fibers mischaracterizes Ms. Song's testimony. In the portion referred to, Ms. Song's testimony was: "I can't recall the origins of what I recall, whether it was a phone [call] or a[n] e-mail." (Salzmann Decl. ¶8, Ex. F (Song 61:12-19; *see also* 35:13-18; 72:20-73:2)). In fact, Ms. Song testified at length that the parties' agreement was based in significant part on conversations and negotiations she had with Mr. Graham. Salzmann Decl. ¶8, Ex. F (Song 31:8-24; 32:14-33:1; 33:9-17)). Further, Ms. Song has a clear recollection and understanding that Phoenix Fibers agreed to shred (*i.e.*, destroy) all of Plaintiffs' products into shoddy fiber. (Salzmann Decl. ¶8, Ex. F (Song 67:11-24; 28:10-29:3)). Moreover, contemporaneous written communications between the parties memorialize key material terms of the parties' agreement, including, without limitation, Phoenix Fibers' agreement to shred (and thereby destroy) all goods donated to it by Plaintiffs. (Salzmann

1 Decl. ¶16, Ex. N (SP/RCRV005538-5539); ¶18, Ex. P (SP/RCRV005545); ¶20,
 2 Ex. R (SP/RCRV005583-5584); ¶24, Ex. V (SP/RCRV005629); ¶27, Ex. Y
 3 (SP/RCRV005640)).

4 39. Further, despite Ms. Kim's belief, Plaintiffs do not know if, and cannot
 5 prove that, during verbal discussions, Phoenix Fibers ever agreed to destroy all
 6 items that Plaintiffs donated to Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App.
 7 Ex. E) 18:4-19:15; 27:13-16; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5;
 8 33:9-20; 35:21-36:14; 51:5-52:3; 52:11-17; Maciel Decl. (App. Ex. C) ¶¶ 32-33;
 9 App. Ex. II-JJ). Nor have Plaintiffs provided evidence that Phoenix Fibers ever
 10 agreed to destroy every shipment of materials Plaintiffs provided them. (*See id.*)

11 **Plaintiffs' Response:** Disputed. Ms. Kim testified that she saw written
 12 communications between Ms. Song and Mr. Graham wherein Mr. Graham
 13 represented that Phoenix Fibers would destroy Plaintiffs' second-quality denim
 14 products and convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim
 15 28:14-25); Kim Decl. ¶11), and testified that “[w]e did require that the items be
 16 destroyed and recycled” (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)). Further,
 17 contemporaneous written communications between the parties memorialize key
 18 material terms of the parties' agreement, including, without limitation, Phoenix
 19 Fibers' agreement to shred (and thereby destroy) all goods donated to it by
 20 Plaintiffs:

- 21 • On November 4, 2011, Mr. Graham sent Ms. Song an email explaining
 22 Phoenix Fibers' shredding services, and explaining that ***[i]f necessary,
 23 [Phoenix Fibers] can remove the tags, buttons and zippers. There is no
 24 charge for our recycling service.*** (Salzmann Decl. ¶16, Ex. N
 25 (SP/RCRV005538-5539) (emphasis added)). It would only be necessary
 26 to remove “the tags, buttons and zippers” from Plaintiffs products if the
 27 products were being recycled into shoddy fiber, as the parties
 28 contemplated. (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets*

Big Rewards for Phoenix Fibers”) (explaining that the first step in the shredding process is “a proprietary process that removes all buttons, zippers and tags”)).

- On November 15, 2015, two weeks prior to Plaintiffs' delivery of their first shipment of products to Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent an email to Ms. Song explaining “[t]here's not much else needed. ***We will receive the material, schedule it for destruction and away we go!*** I'll call you this morning to confirm this email.” (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).
- December 5, 2011, a week after Plaintiffs delivered their first shipment of products Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent Ms. Song an email explaining what happens to Plaintiffs' products: “***The product we receive may be recycled into any number of products. This could range from house, automobile or appliance insulation to prison mattresses.... There is also a certain portion that cannot be used, such as metal pieces in the buttons and zippers. These are removed and recycled separately.***” (Salzmann Decl. ¶20, Ex. R (SP/RCRV005583-5584) (emphasis added)).
- A few months later in March 2012, Mr. Graham reaffirmed this process in an email to Ms. Song stating: “***Phoenix Fibers converts the jeans into fiber that gets sent to our affiliate company, Bonded Logic*** which in turn, manufactures the end products.” (Salzmann Decl. ¶24, Ex. V (SP/RCRV005629) (emphasis added)).
- Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms. Song following up on their recent in-person meeting stating: “***Some of our new machinery I told you about has just arrived. Once we have it***

set up and running, I will send you a video of us running your jeans.”

(Salzmann Decl. ¶27, Ex. Y (SP/RCRV005640) (emphasis added)).

40. Plaintiffs' 30(b)(6) witness admitted: "I don't know if the word 'destroyed' was used in the verbal discussions" between Ms. Song and Mr. Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.)

Plaintiffs' Response: Disputed to the following extent. While Ms. Kim so testified, she saw written communications between Ms. Song and Mr. Graham wherein Mr. Graham represented that Phoenix Fibers would destroy Plaintiffs' second-quality denim products and convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that “[w]e did require that the items be destroyed and recycled” (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)).

41. Plaintiffs allege that Ms. Song reported to Ms. Kim with respect to the negotiations and entry into the Alleged Contract between Plaintiffs and Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 14:4-9; 18:4-19:15; 24:17-25:4; 28:12-29:14; Song Depo. (App. Ex. D) 27:9-15.)

Plaintiffs' Response: Disputed as to the reference to an “Alleged Contract.” Otherwise undisputed, as throughout her discussions with Phoenix Fibers, Ms. Song reported back to Ms. Kim, Mr. Choi and Steve Kim, Plaintiffs’ then-COO, her superiors who also worked for both Sweet People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24; 20:1-11; 20:25-21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim Decl. ¶9; Choi Decl. ¶8)

42. Despite reporting to Ms. Kim with respect to the negotiations between Sweet People and Phoenix Fibers and the alleged formation of the Alleged Contract, Ms. Song never reported to Ms. Kim that the Alleged Contract contained an explicit requirement on Phoenix Fibers to destroy all items that Plaintiffs donated to

1 Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-19;
 2 28:12-29:14.)

3 **Plaintiffs' Response:** Disputed. Throughout her discussions with Phoenix
 4 Fibers, Ms. Song reported back to Ms. Kim, Mr. Choi and Steve Kim, Plaintiffs'
 5 then-COO, her superiors who also worked for both Sweet People and RCRV
 6 that the agreement between the parties required Phoenix Fibers to destroy all
 7 items that Plaintiffs donated to Phoenix Fibers. (Salzmann Decl. ¶6, Ex. D (Kim
 8 18:4-24; 20:1-11; 20:25-21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533),
 9 ¶16, Ex. N (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim
 10 Decl. ¶9; Choi Decl. ¶8). Moreover, Ms. Kim saw written communications
 11 between Ms. Song and Mr. Graham wherein Mr. Graham represented that
 12 Phoenix Fibers would destroy Plaintiffs' second-quality denim products and
 13 convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim
 14 Decl. ¶11), and testified that “[w]e did require that the items be destroyed and
 15 recycled” (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)). Based on her
 16 contemporaneous discussions with Ms. Song regarding Ms. Song's negotiations
 17 with Mr. Graham, Ms. Kim understood that Plaintiffs had conditioned their
 18 agreement to provide Phoenix Fibers with their second-quality MISS ME and
 19 ROCK REVIVAL denim products only based on Phoenix Fibers' agreement to
 20 convert all such products into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim
 21 28:14-29:4); Kim Decl. ¶10; *see also* Choi Decl. ¶8).

22 43. Prior to October 27, 2015, Plaintiffs never verbally or electronically told
 23 Phoenix Fibers that reselling the products donated to Phoenix Fibers by Plaintiffs was
 24 prohibited. (Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)

25 **Plaintiffs' Response:** Disputed to the following extent. While no such
 26 communication took place prior to October 27, 2015, Plaintiffs had no reason to
 27 believe that Phoenix Fibers had violated the terms of the parties' agreement that

1 Phoenix Fibers would only shred all products donated to it by Plaintiffs, and had
2 resold any such products, prior to that date.

3 44. Plaintiffs were aware of Phoenix Fibers' certified destruction program.
4 (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 167:21-168:24; 169:12-170:3; Maciel
5 Decl. (App. Ex. C) ¶ 18; App. Ex. U.) Plaintiffs did not require any certification
6 from Phoenix Fibers confirming that the items Plaintiffs donated to Phoenix Fibers
7 had been destroyed. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 34:13-21; Maciel
8 Decl. (App. Ex. C) IN 32-33; App. Ex. II-JJ.) Plaintiffs never paid Phoenix Fibers
9 to destroy the items that Plaintiffs donated to Phoenix Fibers. (Johnson Decl. (App.
10 Ex. B) ¶ 7.)

11 **Plaintiffs' Response:** Disputed as to the existence and Plaintiffs' purported
12 awareness of Phoenix Fibers' "certified destruction program" at the time the
13 parties' agreement was entered into in November 2011. As a result, Plaintiffs
14 did not believe it was necessary to request certificates of destruction from
15 Phoenix Fibers for the second-quality goods they had donated to Phoenix Fibers
16 for that purpose, because they "assumed that the goods were being recycled [into
17 shoddy fiber] as [they] were told they were." (Salzmann Decl. ¶6, Ex. D (Kim
18 168:12-19; 26:23-28:5; 39:5-22); Kim Decl. ¶13). As Mr. Graham advised Ms.
19 Song, "*We will receive the material, schedule it for destruction and away we
20 go!*" (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).

21 45. Prior to October 2015, Plaintiffs never sought confirmation that any
22 products it had donated to Phoenix Fibers had been destroyed. (Maciel Decl. (App. Ex.
23 C) ¶¶ 32-33; App. Ex. II-JJ.)

24 **Plaintiffs' Response:** Disputed to the following extent. Prior to October 2015,
25 Plaintiffs had no reason to believe it was necessary to request continual
26 confirmation of destruction from Phoenix Fibers, because they assumed Phoenix
27 Fibers was adhering to its agreement to destroy all such products. In particular,
28 Plaintiffs "assumed that the goods were being recycled [into shoddy fiber] as

1 [they] were told they were.” (Salzmann Decl. ¶6, Ex. D (Kim 168:12-19; 26:23-
2 28:5; 39:5-22); Kim Decl. ¶13; Choi Decl. ¶¶10-11).

3 46. Plaintiffs assert that they believed that recycling was synonymous with
4 “destroying” in the context of clothing. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E)
5 27:20-28:5; 39:5-12; 197:18-25; 198:23-199:12.)

6 **Plaintiffs’ Response:** Disputed. Plaintiffs believed—and correctly so—that
7 recycling denim products into shoddy fiber, which is what Phoenix Fibers
8 agreed to do with respect to all such products donated to it by Plaintiffs, required
9 destruction. (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:5; 39:5-22); Kim Decl.
10 ¶13). As Ms. Kim testified: “we believed that during the recycling process, the
11 items would naturally be destroyed as they were made into shoddy fiber.”
12 (Salzmann Decl. ¶6, Ex. D (Kim 28:2-4)).

13 47. Ms. Song never formed a specific agreement with Phoenix Fibers, she
14 merely had an understanding of what Phoenix Fibers did. (Song Depo. (App. Ex. D)
15 62:19-63:16.)

16 **Plaintiffs’ Response:** Disputed. In fact, Ms. Song believed that Plaintiffs had
17 formed such an agreement with Phoenix Fibers. When asked at her deposition
18 for her “understanding of the agreement at the time that that first shipment went
19 to Phoenix Fibers,” Ms. Song stated:

20 My understanding was that we would send the inventory that
21 we needed to -- that we wanted to use as part of our -- one of
22 our green initiative programs. ***Phoenix Fibers would break***
down the inventory sent to them, shred it and create insulation
that they would pass along to Bonded Logic, who insulated
23 houses in need. (Salzmann Decl. ¶8, Ex. F (Song 67:11-24
24 (emphasis added); *see also* 28:10-29:3)).

25 27 Moreover, Ms. Song testified as follows:
26
28

1 Q. Do you have an understanding that prior to that first
2 shipment of goods from Sweet People to Phoenix Fibers,
3 that there was an agreement between Sweet People and
4 Phoenix Fibers?

5 [Objections]

6 A. Yes, I believe that there was an understanding.

7 Q. And you understand -- Strike that.

8 So it's your understanding that that agreement -- Strike
9 that.

10 You said you believe there was an understanding.

11 Did you un- -- Did you believe that that understanding was
12 an agreement?

13 [Objections]

14 A. Yes. (Salzmann Decl. ¶8, Ex. F (Song 59:7-60:3)).

15 48. Ms. Song's understanding of what Phoenix Fibers did was based, in part,
16 on conversations with a third party and the information she viewed on a third-party
17 website. (Song Depo. (App. Ex. D) 43:23-48:17.)

18 **Plaintiffs' Response:** Disputed, with respect to the contention that "Ms. Song's
19 understanding of what Phoenix Fibers did was based, in part, on conversations
20 with a third party...," as no such conversations are identified in the citation list
21 above. Moreover, Plaintiffs dispute the characterization of Phoenix Fibers'
22 commonly-owned affiliate, Bonded Logic, as a "third party." Phoenix Fibers
23 and Bonded Logic are affiliated companies owned by the Kean family.
24 (Salzmann Decl. ¶38, Ex. JJ ("Shredding Clothing Nets Big Rewards for
25 Phoenix Fibers"); ¶39, Ex. KK ("Chandler firm grows; recycles denim material
26 into insulation")). Tod Kean is the President and CEO of Phoenix Fibers, and
27 the Secretary and Co-founder of Bonded Logic. (Salzmann Decl. ¶5, Ex. C
28 (Kean 58:11-16)). In fact, "Phoenix Fibers was founded to provide a stable

1 source of raw material for Bonded Logic's business of manufacturing denim
2 cloth-based insulation under the name UltraTouch Denim." (Salzmann Decl.
3 ¶38, Ex. JJ ("*Shredding Clothing Nets Big Rewards for Phoenix Fibers*")).

4 49. Plaintiffs assert that subsequent to the formation of the Alleged
5 Contract, Plaintiffs and Phoenix Fibers entered a series of other contracts, the terms
6 of which pertained only to the shipment of the products that Plaintiffs would
7 donate to Phoenix Fibers pursuant to the Alleged Contract (the "Shipment
8 Contracts"). (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 15:1-16:6; 16:21-17:7;
9 17:14-18:3; Song Depo. (App. Ex. D) 55:13-56:13.)

10 **Plaintiffs' Response:** Disputed to the extent it is suggested that the terms of the
11 "Shipment Contracts" in any way entitled Phoenix Fibers to depart from the
12 terms of the so-called "Alleged Contract," otherwise undisputed.

13 50. Despite the Shipment Contracts, the terms of the Alleged Contract
14 initially entered into by Ms. Song never changed. (Song Depo. (App. Ex. D) 86:8-
15 15.)

16 **Plaintiffs' Response:** Disputed to the extent it is suggested that the terms of the
17 "Shipment Contracts" in any way entitled Phoenix Fibers to depart from the
18 terms of the so-called "Alleged Contract," otherwise undisputed. Plaintiffs
19 further state that they donated MISS ME and ROCK REVIVAL products to
20 Phoenix Fibers pursuant to the terms of parties' November 2011 agreement—
21 namely, (a) Plaintiffs would deliver unfinished, damaged and otherwise second-
22 quality MISS ME and ROCK REVIVAL denim products to Phoenix Fibers'
23 Chandler, Arizona facility, at no cost to Phoenix Fibers, and (b) Phoenix Fibers
24 would shred all such products into shoddy fiber, which would then be used by
25 Phoenix Fibers' affiliate, Bonded Logic, to manufacture environmentally
26 friendly products such as insulation. (Salzmann Decl. ¶8, Ex. F (Song 28:10-
27 29:3; 58:4-60:3; 64:3-8; 65:21-66:3; 67:11-24; 77:3-24; 85:11-86:1); ¶6, Ex. D
28 (Kim 34:4-12; 37:22-38:10); ¶16, Ex. N (SP/RCV005538-5539); ¶18, Ex. P

1 (SP/RCRV005545); ¶20, Ex. R (SP/RCRV005583-5584); ¶24, Ex. V
2 (SP/RCRV005629); ¶27, Ex. Y (SP/RCRV005640); Kim Decl. ¶12; Choi Decl.
3 ¶8).

4 51. Plaintiffs allege that the *Shipment Contracts* were negotiated by numerous
5 individuals, including Lilly Kim and Felipe Salgado, on behalf of Plaintiffs, and Matt
6 Graham and Steven Johnson, on behalf of Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim)
7 (App. Ex. E) 17:1-7; 201:14-202:25; Maciel Decl. (App. Ex. C)1111 19-20; App. Ex.
8 V-W; Song Depo. (App. Ex. D) 55:13-56:13.)

9 **Plaintiffs' Response:** Disputed to the extent it is suggested that the terms of the
10 “Shipment Contracts” were different than the terms of the so-called “Alleged
11 Contract,” otherwise undisputed.

12 52. The Shipping Contracts only governed the terms of actual shipment and
13 timing of shipment of materials to Phoenix Fibers, not other terms. (Rule 30(b)(6)
14 Depo. (Kim) (App. Ex. E) 15:1-16:6; 16:21-17:7; 17:14-18:3; Song Depo. (App. Ex.
15 D) 55:13-56:13.)

16 **Plaintiffs' Response:** Disputed to the extent it is suggested that the terms of the
17 “Shipment Contracts” in any way entitled Phoenix Fibers to depart from the
18 terms of the so-called “Alleged Contract,” otherwise undisputed.

19 53. Sweet People donated Miss Me brand clothing items to Phoenix Fibers.
20 (Complaint (App. Ex. H) ¶¶ 28-30.)

21 **Plaintiffs' Response:** Disputed. Plaintiffs donated MISS ME and ROCK
22 REVIVAL products to Phoenix Fibers pursuant to the terms of parties’
23 agreement—namely, (a) Plaintiffs would deliver unfinished, damaged and
24 otherwise second-quality MISS ME and ROCK REVIVAL denim products to
25 Phoenix Fibers’ Chandler, Arizona facility, at no cost to Phoenix Fibers, and (b)
26 Phoenix Fibers would shred all such products into shoddy fiber, which would
27 then be used by Phoenix Fibers’ affiliate, Bonded Logic, to manufacture
28 environmentally friendly products such as insulation. (Salzmann Decl. ¶8, Ex. F

1 (Song 28:10-29:3; 58:4-60:3; 64:3-8; 65:21-66:3; 67:11-24; 77:3-24; 85:11-
2 86:1); ¶6, Ex. D (Kim 34:4-12; 37:22-38:10); ¶16, Ex. N (SP/RCRV005538-
3 5539); ¶18, Ex. P (SP/RCRV005545); ¶20, Ex. R (SP/RCRV005583-5584); ¶24,
4 Ex. V (SP/RCRV005629); ¶27, Ex. Y (SP/RCRV005640); Kim Decl. ¶12; Choi
5 Decl. ¶8).

6 54. RCRV donated Rock Revival brand clothing items to Phoenix Fibers.
7 (Complaint (App. Ex. H) ¶¶ 28-30.)

8 **Plaintiffs' Response:** Disputed. Plaintiffs donated MISS ME and ROCK
9 REVIVAL products to Phoenix Fibers pursuant to the terms of parties'
10 agreement—namely, (a) Plaintiffs would deliver unfinished, damaged and
11 otherwise second-quality MISS ME and ROCK REVIVAL denim products to
12 Phoenix Fibers' Chandler, Arizona facility, at no cost to Phoenix Fibers, and (b)
13 Phoenix Fibers would shred all such products into shoddy fiber, which would
14 then be used by Phoenix Fibers' affiliate, Bonded Logic, to manufacture
15 environmentally friendly products such as insulation. (Salzmann Decl. ¶8, Ex. F
16 (Song 28:10-29:3; 58:4-60:3; 64:3-8; 65:21-66:3; 67:11-24; 77:3-24; 85:11-
17 86:1); ¶6, Ex. D (Kim 34:4-12; 37:22-38:10); ¶16, Ex. N (SP/RCRV005538-
18 5539); ¶18, Ex. P (SP/RCRV005545); ¶20, Ex. R (SP/RCRV005583-5584); ¶24,
19 Ex. V (SP/RCRV005629); ¶27, Ex. Y (SP/RCRV005640); Kim Decl. ¶12; Choi
20 Decl. ¶8).

21 55. Damaged or defective items that Plaintiffs donated to Phoenix Fibers were
22 marked as either damaged or defective. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E)
23 77:13-78:1; 108:10-109:3; 112:9-113:4; 117:20-23; 123:18-124:14; 132:914; App Ex.
24 R-S; Rule 30(b)(6) Depo. (Salgado) (App. Ex. F) 32:23-33:16.)

25 **Plaintiffs' Response:** Disputed to the extent this statement is intended to imply
26 that all items that Plaintiffs delivered to Phoenix Fibers for recycling into
27 shoddy fiber “were marked as either damaged or defective,” even though all
28

1 such items were, in fact, damaged, defective or otherwise second-quality.
2 (Salzmann Decl. ¶6, Ex. D (Kim 112:9-21)).

3 56. No one at Phoenix Fibers ever affixed any Miss Me or Rock Revival
4 brand name to any product or collection of products. (Kean Decl. (App. Ex. A) ¶¶ 1-
5 16.)

6 **Plaintiffs' Response:** Undisputed.

7 **E. Post-Donation Recycling**

8 57. Defendant U.S. General Exports (“U.S. General”) is a clothing recycling
9 company. (Kean Decl. (App. Ex. A) ¶ 13; Johnson Decl. (App. Ex. B) 8; Maciel Decl.
10 (App. Ex. C) ¶ 31; App. Ex. HH.)

11 **Plaintiffs' Response:** Disputed, to the extent it implies that U.S. General’s
12 business is limited to clothing recycling. When Mr. Johnson was asked at his
13 deposition whether it was his understanding that “U.S. General Export is a
14 recycling company,” his response was “I have no idea.” (Salzmann Decl. ¶4,
15 Ex. B (Johnson 98:6-8)). Discovery of U.S. General has yet to be concluded.
16 (Salzmann Decl. ¶¶49-55, 62).

17 58. Phoenix Fibers sold certain products donated by Plaintiffs, as credential,
18 in bulk and by the pound, to U.S. General. (Johnson Decl. (App. Ex. B) ¶ 8.)

19 **Plaintiffs' Response:** Disputed as to the use of the phrase “as credential.”
20 Although Phoenix Fibers typically refers to “credential” that it sells by a
21 standard item number (20-040) on its “Packing List,” the “Packing List”
22 corresponding to Phoenix Fibers’ May 21, 2015 sale of Plaintiffs’ products to
23 U.S. General—which was filled out by a Phoenix Fibers’ employee—identified
24 the goods being sold as “Miss Me 3,473 lbs” and “RR [Rock Revival] 3,294.”
25 (Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-85:8; 85:24-86:2); ¶29, Ex.
26 AA (US GEN EXPORT 000001-27)). Moreover, U.S. General, in turn, sold
27 Plaintiffs’ goods to Defendant SAC International Trader, Inc. by the unit,
28

1 making direct reference to the MISS ME and ROCK REVIVAL brand names.
 2 (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT 000028-33)).

3 59. Phoenix Fibers first sold credential to U.S. General in 2013 and not
 4 before; however, it was not until 2015 that Phoenix Fibers sold credential to U.S.
 5 General that contained items donated by Sweet People or RCRV. Many of the items
 6 donated by Sweet People and RCRV were converted into shoddy fiber. (Johnson Decl.
 7 (App. Ex. B) ¶ 9.)

8 **Plaintiffs' Response:** Disputed. When Mr. Johnson was asked at his
 9 deposition whether Phoenix Fibers was doing business with Kamel Mroueh, the
 10 owner of U.S. General, at the time he came on board as Plant Manager in
 11 September 2013, his response was "I honestly don't know, but I'm -- yeah, I
 12 don't know. I don't know when the relationship started." (Salzmann Decl. ¶5,
 13 Ex. C (Johnson 33:5-10)). However, Mr. Johnson now states in his declaration
 14 that "[t]o my knowledge, based on my job and a review of records, Phoenix
 15 Fibers did not sell any credential to U.S. General prior to 2013." (Johnson Decl.
 16 ¶8). Whatever Phoenix Fibers "records" Mr. Johnson is referring to in his
 17 declaration have not been produced in this litigation. Moreover, when Mr.
 18 Johnson was asked at his deposition if he had "a sense of the percentage of
 19 donated Miss Me and Rock Revival product that was converted into shoddy as
 20 opposed to sold," his response was "I have no idea." When further asked
 21 whether anyone at Phoenix Fibers would know the answer to that question, Mr.
 22 Johnson's response was "No." (Salzmann Decl. ¶5, Ex. C (Johnson 70:19-24)).
 23 Similarly, Mr. Kean verified Phoenix Fibers' responses to Plaintiffs'
 24 Interrogatories, which state that Phoenix Fibers (a) "does not know the total
 25 volume of [Plaintiffs' products] it processed into shoddy fiber," and (b) "does
 26 not know the total volume of [Plaintiffs' products] it sold, distributed, supplied
 27 or otherwise conveyed to any Person." (Salzmann Decl. ¶44, Ex. PP (Phoenix
 28

1 Fibers' Responses to First Set of Interrogatories From Plaintiff Sweet People
 2 Apparel, Inc.)).

3 60. Kamel Mroueh was a representative of U.S. General with whom
 4 representatives of Phoenix Fibers communicated to facilitate the sale of credential.
 5 (Johnson Decl. (App. Ex. B) ¶ 10.)

6 **Plaintiffs' Response:** Disputed to the extent this statement of fact purports to
 7 refer to sales of products other than those that Plaintiff donated to Phoenix
 8 Fibers for recycling into shoddy fiber, otherwise undisputed.

9 61. U.S. General, through Mr. Mroueh, only purchased credential from
 10 Phoenix Fibers at Phoenix Fibers' warehouse. (Johnson Decl. (App. Ex. B) ¶ 11.) The
 11 credential was stored in large bins or boxes. (Johnson Decl. (App. Ex. B) ¶ 11.) Mr.
 12 Mroueh never inquired into which brands of credential Phoenix Fibers had in its
 13 warehouse nor did Mr. Mroueh ever state that he was interested in certain brands of
 14 credential. (Johnson Decl. (App. Ex. B) ¶ 12.)

15 **Plaintiffs' Response:** Disputed. Plaintiffs contest the veracity of the
 16 declarant's statement upon which this statement of fact is based, and have not
 17 yet taken the deposition of U.S. General, the party that purchased Plaintiffs'
 18 products from Phoenix Fibers, to test the accuracy of such statement. (Salzmann
 19 Decl. ¶¶48-55, 62). Further, there is evidence that Mr. Mroueh selected
 20 Plaintiffs' product for purchase by identifying Plaintiffs' brand names on the
 21 boxes while being escorted by Mr. Johnson around Phoenix Fibers' warehouse
 22 in which such products were maintained. (Salzmann Decl. ¶4, Ex. B (Johnson
 23 39:13-16; 71:5-14). Moreover, although Phoenix Fibers typically refers to the
 24 "credential" that it sells by a standard item number (20-040) on its "Packing
 25 List," the "Packing List" corresponding to Phoenix Fibers' May 21, 2015 sale of
 26 Plaintiffs' products to U.S. General—which was filled out by a Phoenix Fibers'
 27 employee—identified such products as "Miss Me 3,473 lbs" and "RR [Rock
 28 Revival] 3,294." (Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-85:8;

1 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). Further, U.S.
2 General, in turn, sold Plaintiffs' to Defendant SAC International Trader, Inc. by
3 the unit, and with direct reference to the MISS ME and ROCK REVIVAL brand
4 names. (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT 000028-33)).

5 62. U.S. General paid the market rate for credential for all items it purchased
6 from Phoenix Fibers, which was generally \$0.30 to \$0.60 per pound. U.S. General
7 never paid a premium for credential that included Sweet People or Rock Revival
8 products. (Johnson Decl. (App. Ex. B) ¶ 13; Maciel Decl. (App. Ex. C) 30; App. Ex.
9 GG.)

10 **Plaintiffs' Response:** Disputed. Plaintiffs contest the veracity of the declarant's
11 statement upon which this statement of fact is based, and have not yet taken the
12 deposition of U.S. General, the party that purchased Plaintiffs' products from
13 Phoenix Fibers, to test the accuracy of such statement. Further, whatever
14 Phoenix Fibers records the declarant may have been referring to have not been
15 produced in discovery in this action. Plaintiffs further dispute the use of the
16 term "credential" when referring to Phoenix Fibers' sales of Plaintiffs' second-
17 quality products to U.S. General. Although Phoenix Fibers typically refers to
18 "credential" that it sells by a standard item number (20-040) on its "Packing
19 List," the "Packing List" corresponding to Phoenix Fibers' May 21, 2015 sale of
20 Plaintiffs' products to U.S. General—which was filled out by a Phoenix Fibers'
21 employee—identified the goods being sold as "Miss Me 3,473 lbs" and "RR
22 [Rock Revival] 3,294." (Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-
23 85:8; 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). Moreover,
24 U.S. General, in turn, sold Plaintiffs' goods to Defendant SAC International
25 Trader, Inc. by the unit, making direct reference to the MISS ME and ROCK
26 REVIVAL brand names. (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT
27 000028-33)).

1 63. U.S. General was not confused as to the origin or quality of the clothing it
 2 purchased from Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 198:23-
 3 199:12; Deposition of Tiffany Wolff (“Wolff Depo. (App. Ex. G)”) 125:11:25; 146:14-
 4 147:14.)

5 **Plaintiffs’ Response:** Disputed to the extent it is suggested that this statement
 6 of fact has any relevance whatsoever to Plaintiffs’ claims, which are not
 7 premised on the alleged confusion of U.S. General or any other Defendant.

8 64. Any purchaser of the items that were originally donated to Phoenix Fibers
 9 by Plaintiffs was not confused as to the quality or origin of the credential that it was
 10 purchasing. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 198:23-199:12; Wolff Depo.
 11 (App. Ex. G) 125:11:25; 146:14-147:14.) The purchaser understood that the items
 12 were defective or second-quality goods that originated with Sweet People or RCRV.
 13 (*Id.*)

14 **Plaintiffs’ Response:** Disputed to the extent this statement of fact has any
 15 relevance to Plaintiffs’ claims as they pertain to any of the Defendant
 16 wholesalers (U.S. General, SAC International Traders and Comak Trading), but
 17 there is no evidence that “any purchaser” of the products Plaintiffs’ originally
 18 donated to Phoenix Fibers was not confused as to the quality or origin of such
 19 products. Further disputed as to the use of the term “credential” to describe
 20 Plaintiffs’ products. Although Phoenix Fibers typically refers to the “credential”
 21 that it sells by a standard item number (20-040) on its “Packing List,” the
 22 “Packing List” corresponding to Phoenix Fibers’ May 21, 2015 sale of
 23 Plaintiffs’ products to U.S. General—which was filled out by a Phoenix Fibers’
 24 employee—identified such products as “Miss Me 3,473 lbs” and “RR [Rock
 25 Revival] 3,294.” (Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-85:8;
 26 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). Moreover, U.S.
 27 General, in turn, sold Plaintiffs’ to Defendant SAC International Trader, Inc. by
 28

1 the unit, and with direct reference to the MISS ME and ROCK REVIVAL brand
2 names. (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT 000028-33)).

3 65. Phoenix Fibers never advertised that it sold, distributed, manufactured or
4 otherwise had any connection of any kind with the Miss Me brand or any other brand
5 of Sweet People. (Kean Decl. (App. Ex. A) ¶¶ 11-16.)

6 **Plaintiffs' Response:** Disputed. Plaintiffs contest the veracity of the
7 declarant's statement upon which this statement of fact is based, and have not
8 yet taken the deposition of U.S. General, the party that purchased Plaintiffs'
9 products from Phoenix Fibers, to test the accuracy of such statement. Moreover,
10 although Phoenix Fibers typically refers to the "credential" that it sells by a
11 standard item number (20-040) on its "Packing List," the "Packing List"
12 corresponding to Phoenix Fibers' May 21, 2015 sale of Plaintiffs' products to
13 U.S. General—which was filled out by a Phoenix Fibers' employee—identified
14 the such products as "Miss Me 3,473 lbs" and "RR [Rock Revival] 3,294."
15 Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-85:8; 85:24-86:2); ¶29, Ex.
16 AA (US GEN EXPORT 000001-27)).

17 66. Phoenix Fibers never advertised that it sold, distributed, manufactured or
18 otherwise had any connection of any kind with the Rock Revival brand or any other
19 brand of RCRV. (Kean Decl. (App. Ex. A) ¶¶ 11-16.)

20 **Plaintiffs' Response:** Disputed. Plaintiffs contest the veracity of the
21 declarant's statement upon which this statement of fact is based, and have not
22 yet taken the deposition of U.S. General, the party that purchased Plaintiffs'
23 products from Phoenix Fibers, to test the accuracy of such statement. Moreover,
24 although Phoenix Fibers typically refers to the "credential" that it sells by a
25 standard item number (20-040) on its "Packing List," the "Packing List"
26 corresponding to Phoenix Fibers' May 21, 2015 sale of Plaintiffs' products to
27 U.S. General—which was filled out by a Phoenix Fibers' employee—identified
28 the such products as "Miss Me 3,473 lbs" and "RR [Rock Revival] 3,294."

1 Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-85:8; 85:24-86:2); ¶29, Ex.
2 AA (US GEN EXPORT 000001-27)).

3 67. On October 27, 2017, Ms. Song called Mr. Kean to complain about
4 certain Miss Me and Rock Revival denim being sold on eBay. After October 27, 2015,
5 Phoenix Fibers never sold any products that Plaintiffs donated to Phoenix Fibers as
6 credential to anyone. (Kean Decl. (App. Ex. A) ¶ 17.)

7 **Plaintiffs' Response:** Disputed. Ms. Kim, not Ms. Song, spoke to Mr. Kean on
8 or around October 27, 2015 (not October 27, 2017). Further, U.S. General has
9 produced documents reflecting its purchase of 20,958 pounds of Plaintiffs'
10 products from Phoenix Fibers on November 10, 2015. Mr. Johnson signed the
11 bill of lading corresponding to the shipment of these goods on November 10,
12 2015. (Salzmann Decl. ¶33, Ex. EE (PHX001040); ¶29, Ex. AA (US GEN
13 EXPORT 000010-11); Kim Decl. ¶¶19-21).

14 68. Plaintiffs allege that between December 2015 and February 2016, they
15 covertly purchased back 29,000 back [sic] units of denim containing their
16 trademarks from the retailers named as defendants in the Complaint. (Complaint
17 (App. Ex. H) ¶ 40).

18 **Plaintiffs' Response:** Disputed. In an effort to mitigate the incalculable harm
19 to the MISS ME and ROCK REVIVAL brands being caused by the widespread
20 availability of second-quality MISS ME and ROCK REVIVAL denim products,
21 Plaintiffs authorized their investigators to purchase as many of such products as
22 possible so they could be removed from consumer markets. Between December
23 11, 2015 and February 9, 2016 (the day before Plaintiffs commenced this
24 action), Plaintiffs' investigators purchased over 29,000 units of second-quality
25 MISS ME and ROCK REVIVAL denim products from Defendants SAC
26 International Traders, Inc., Shaukat Ali Chohan, Comak Trading, Inc. and Lydia
27 Evilsa Terrazas Cho, at a cost of over \$190,000. (Kim Decl. ¶¶30-32).

1 69. In December 2015, with the cooperation of Phoenix Fibers, Plaintiffs
2 removed from Phoenix Fibers' warehouse all the remaining products, totaling five
3 truckloads and no less than 130,000 pounds, that they had previously donated to
4 Phoenix Fibers. (Johnson Decl. (App. Ex. B) ¶ 17.)

5 **Plaintiffs' Response:** Disputed, to the extent of Phoenix Fibers' representation
6 that Plaintiffs were provided with "all the remaining products," as Plaintiffs
7 have no way to test the veracity of that statement. Further, Plaintiffs dispute that
8 any such removal was done with the "cooperation" of Phoenix Fibers, as what
9 precipitated such removal of products from Phoenix Fibers' warehouse were its
10 false statements that it had not resold such products, but rather that they had
11 "leaked" out of the warehouse. (Kim Decl. ¶¶26-29).

12 70. Plaintiffs cannot prove, nor have they even alleged, that Phoenix Fibers
13 conspired with other defendants and certainly not to such an extent as to be co-partners
14 with them.

15 **Plaintiffs' Response:** Disputed. By law, no specific conspiracy or co-partner
16 relationship must be pleaded or proven. Rather, the rule is simply that joint
17 tortfeasors in a trademark case are liable for the entire harm, and for any
18 monetary award that may issue as a result. *See Restatement (Second) of Torts* §
19 875 (1979). Plaintiffs have so alleged, and have come forward with evidence
20 that is more than sufficient to comply with such rule. (Salzmann Decl. ¶12, Ex.
21 J (Plaintiffs' First Amended Complaint) at ¶¶ 18, 43, 50).

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1 **II. PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS AS**
2 **TO WHICH THEY CONTEND THERE IS NO DISPUTE, BUT TO THE**
3 **EXTENT DISPUTED BY PHOENIX FIBERS, ARE ACCORDINGLY**
4 **GENERAL DISPUTES OF MATERIAL FACT**

5 **A. Plaintiffs and their MISS ME and ROCK REVIVAL Brands**

6 1. Sweet People and RCRV are affiliated jeanswear companies which
7 respectively manufacture, promote, distribute and sell high-quality denim and apparel
8 products throughout the United States under the well-known MISS ME and ROCK
9 REVIVAL brand names, each of which is the subject of numerous trademark
10 registrations. (Choi Decl. ¶3; Salzmann Decl. ¶12, Ex. J (Plaintiffs' First Amended
11 Complaint) at Exs. A, B).

12 2. MISS ME and ROCK REVIVAL products are sold at such prominent
13 retail outlets as Macy's, Nordstrom, Dillard's and The Buckle, both in-store and
14 online, and through Plaintiffs' respective ecommerce websites (<www.missme.com>
15 and <www.rockrevival.com>). MISS ME jeans typically retail for approximately
16 \$120, while ROCK REVIVAL jeans retail for around \$170. (Choi Decl. ¶3).

17 3. MISS ME and ROCK REVIVAL brand jeans are known to consumers as
18 high fashion apparel products. Over the past several years, MISS ME and ROCK
19 REVIVAL denim products have achieved substantial sales success, and received
20 extensive media coverage in widely circulated fashion magazines. (Choi Decl. ¶4).

21 4. In addition to the unique and distinctive designs created by Plaintiffs'
22 designers, which are embroidered or stitched onto the pockets and waistband areas of
23 MISS ME and ROCK REVIVAL denim products, such products are widely
24 recognized for their superior quality, including both the fit and wash. Plaintiffs have
25 worked extremely hard to earn this reputation by maintaining strict quality control
26 policies and procedures that ensure that only products commensurate with the high
27 quality reputation of MISS ME and ROCK REVIVAL denim products ever enter the
28 stream of commerce. (Choi Decl. ¶4).

1 5. An unfortunate consequence of these strict quality control procedures is
 2 that the manufacture of a certain volume of MISS ME and ROCK REVIVAL denim
 3 and apparel products that, following careful inspection, Plaintiffs deem unfit for sale
 4 due to damage, improper finish or other failure to meet their rigorous standards. (Choi
 5 Decl. ¶5).

6 6. Eric Choi is the CEO of RCRV, and the former CEO of Sweet People, a
 7 position he held until December 1, 2016. He is currently a Director and shareholder of
 8 Sweet People. (Choi Decl. ¶1).

9 7. Lilly Kim, Esq., served as the General Counsel of Sweet People and
 10 RCRV from approximately April 2010 to October 2016. Since that time, she has
 11 continued to oversee Plaintiffs' legal matters as an outside consultant. (Kim Decl. ¶1).
 12 Prior to joining Sweet People and RCRV, Ms. Kim was Of Counsel to Reed Smith
 13 LLP. Ms. Kim is a graduate of Loyola Law School. (Salzmann Decl. ¶6, Ex. D (Kim
 14 31:24-32:7; 55:14-16; 56:25-57:1)).

15 8. Lisa Song held the title of Human Resources Manager at Sweet People
 16 between 2009 and February 2014. (Salzmann Decl. ¶8, Ex. F (Song 21:9-12)).
 17 Although Ms. Song was on Sweet People's payroll, she was considered an employee
 18 of both Sweet People and RCRV, and her time was allocated between those two
 19 companies, and a third related entity called Deodar Brands, the proprietor of the MEK
 20 DENIM jeanswear brand. (Salzmann Decl. ¶6, Ex. D (Kim 41:18-42:1; 58:24-59:3;
 21 *see also* 105:24-106:16); Kim Decl. ¶8; Choi Decl. ¶8).

22 **B. The Business of Defendant Phoenix Fibers**

23 9. Phoenix Fibers was founded in July 2011 "[t]o make shoddy [fiber]."
 24 (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ ("*Shredding Clothing Nets Big*
 25 *Rewards for Phoenix Fibers*")).

26 10. Bonded Logic, Inc., Phoenix Fibers' affiliate, is in the business of
 27 manufacturing insulation products, including its flagship product, UltraTouch Denim
 28 Insulation. Shoddy fiber created from recycled denim is the raw material that Bonded

1 Logic uses to manufacturer UltraTouch Denim Insulation. (Salzmann Decl. ¶24, Ex. V
 2 (SP/RCRV005629); ¶39, Ex. KK (“*Chandler firm grows; recycles denim material into*
 3 *insulation*”); ¶40, Ex. LL (“*Green Chandler company looks to bask in solar savings*”);
 4 ¶41, Ex. MM (“*Chandler company turns worn-out blue jeans into insulation, more*”)).

5 11. Phoenix Fibers, Bonded Logic and United Fibers are affiliated companies
 6 owned by the Kean family, and operated by Jim Kean and his two sons, Tod Kean and
 7 Mike Kean. (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for*
 8 *Phoenix Fibers*”); ¶39, Ex. KK (“*Chandler firm grows; recycles denim material into*
 9 *insulation*”)).

10 12. “Phoenix Fibers was founded to provide a stable source of raw material
 11 for Bonded Logic’s business of manufacturing denim cloth-based insulation under the
 12 name UltraTouch Denim.” (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets*
 13 *Big Rewards for Phoenix Fibers*”)).

14 13. Prior to launching Phoenix Fibers, Bonded Logic sourced shoddy fiber
 15 from a shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C (Kean
 16 65:10-66:21)). As Tod Kean, the Managing Partner for Phoenix Fibers and Bonded
 17 Logic, explained: “We used to procure our raw material for the production of
 18 insulation from other shredders. But because of instability in both prices and supply,
 19 we decided to open Phoenix to become vertically integrated by controlling our own
 20 source of raw materials.” (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big*
 21 *Rewards for Phoenix Fibers*”)).

22 14. Today, Phoenix Fibers receives clothing “by the truckload” from various
 23 sources for shredding, and processes 900 to a million pounds of denim and cotton
 24 products into shoddy fiber every month. (Salzmann Decl. ¶4, Ex. B (Johnson 77:2-4);
 25 ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)).

26 15. The first step in the process Phoenix Fibers uses to convert denim into
 27 shoddy fiber is “a proprietary process that removes all buttons, zippers and tags.”

1 (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix*
2 *Fibers*”)).

3 16. Phoenix Fibers was formed for the sole purpose of recycling denim into
4 shoddy fiber, and was not in the business of selling “credential” when the company
5 was launched in July 2011. That aspect of Phoenix Fibers’ business only came into
6 existence at a later date. There is no evidence that Phoenix Fibers was engaged in the
7 sale of credential in November 2011, at the time Plaintiffs and Phoenix Fibers came to
8 an agreement to convert Plaintiffs’ second-quality denim products into shoddy fiber.
9 (Salzmann Decl. ¶5, Ex. C (Kean 17:20-18:9); ¶38, Ex. JJ (“*Shredding Clothing Nets*
10 *Big Rewards for Phoenix Fibers*”)).

11 17. “Credential” can include things such as “sheets, towels, pillow cases,
12 lamps, … bric-a-brac” (Salzmann Decl. ¶4, Ex. B (Johnson 29:20-25)), “miscellaneous
13 household items” and “toaster ovens” (Salzmann Decl. ¶5, Ex. C (Kean 15:17-20)).

14 18. Tod Kean is the President and CEO of Phoenix Fibers, and the Secretary
15 and Co-founder of Bonded Logic. (Salzmann Decl. ¶5, Ex. C (Kean 58:11-16)).

16 19. Matt Graham was the Plant Manager and General Manager of Phoenix
17 Fibers between 2011 and mid-2013, during which time he served as Mr. Kean’s
18 second-in-command. (Salzmann Decl. ¶5, Ex. C (Kean 28:13-24); Kean Decl. ¶10).

19 20. Steve Johnson joined Phoenix Fibers as Plant Manager in September
20 2013. (Salzmann Decl. ¶4, Ex. B (Johnson 13:9-18)). Neither at that time, nor prior to
21 this dispute, did Mr. Johnson ever speak to Mr. Kean or anyone else at Phoenix Fibers
22 about the relationship between Plaintiffs and Phoenix Fibers that predated his
23 employment. (Salzmann Decl. ¶4, Ex. B (Johnson 57:17-20; 58:23-59:1)). Nor did
24 Mr. Johnson ever ask anyone whether Phoenix Fibers was permitted to sell Plaintiffs’
25 products as credential. (Salzmann Decl. ¶4, Ex. B (Johnson 59:2-7)). Mr. Johnson
26 also is unaware of any written communication between Phoenix Fibers and Plaintiffs
27 wherein Phoenix Fibers stated, in words or substance, that it reserved the right to sell
28

1 Plaintiffs' products as credential or otherwise. (Salzmann Decl. ¶4, Ex. B (Johnson
2 66:5-9)).

3 21. Mr. Johnson was not even aware that Plaintiffs had been delivering MISS
4 ME and ROCK REVIVAL denim products to Phoenix Fibers for recycling into shoddy
5 fiber prior to the time he joined the company in September 2013. (Salzmann Decl. ¶4,
6 Ex. B (Johnson 59:18-21)).

7 22. Mr. Graham was no longer employed by Phoenix Fibers at the time Mr.
8 Johnson joined the company in September 2013. Mr. Johnson was unable to even
9 identify Mr. Graham as the person who held the position of Plant Manager before him
10 (Salzmann Decl. ¶4, Ex. B (Johnson 14:8-22)), having testified at his deposition that “I
11 have no idea who Matt Graham is” (Salzmann Decl. ¶4, Ex. B (Johnson 122:19)).

12 **C. Phoenix Fibers' Agreement to Recycle Plaintiffs' MISS ME and**
13 **ROCK REVIVAL Denim Products Into Shoddy Fiber**

14 23. On November 1, 2011, Eric Choi, the owner and CEO of Sweet People
15 and RCRV, sent an email to Lilly Kim containing a link to Bonded Logic's website
16 with the message “let's discuss!” Minutes after receiving this email from Mr. Choi,
17 Ms. Kim forwarded the email to Ms. Song. (Salzmann Decl. ¶6, Ex. D (Kim 67:24-
18 68:8); ¶13, Ex. K (SP/RCRV000065-66); Choi Decl. ¶7; L. Kim Decl. ¶3).

19 24. Mr. Choi and Ms. Kim subsequently discussed the potential opportunity
20 that they believed Bonded Logic offered to dispose of unfinished, damaged or
21 otherwise second-quality MISS ME and ROCK REVIVAL denim products in an
22 environmentally sound manner—*i.e.*, shredding into shoddy fiber—and decided to take
23 advantage of it. (Choi Decl. ¶7; Kim Decl. ¶7).

24 25. Ms. Kim thereafter tasked Ms. Song with finding “a company that
25 recycled denim so that we could recycle our products, rather than sending them to a
26 landfill.” Salzmann Decl. ¶6, Ex. D (Kim 18:17-19); ¶8, Ex. F (Song 24:4-9; 26:2-4);
27 Kim Decl. ¶8; Choi Decl. ¶¶7-8). The impetus for this initiative was Plaintiffs' desire
28 to find an environmentally responsible way to dispose of damaged, unfinished,

1 obsolete, returned or otherwise second-quality MISS ME and ROCK REVIVAL denim
2 products. Salzmann Decl. ¶6, Ex. D (Kim 29:20-30:17); Kim Decl. ¶4; Choi Decl.
3 ¶¶4-7).

4 26. At the time, Plaintiffs would either oversee the destruction of damaged or
5 otherwise second-quality denim products at their factories in Asia, or manually cut up
6 the products domestically and send them to a landfill for disposal. Salzmann Decl. ¶6,
7 Ex. D (Kim 30:18-25); Kim Decl. ¶5; Choi Decl. ¶5).

8 27. While Plaintiffs wanted to dispose of their second-quality denim products
9 in an environmentally friendly manner, they were equally, if not more concerned about
10 permanently removing damaged, unfinished, obsolete, returned or otherwise second-
11 quality MISS ME and ROCK REVIVAL denim products from the stream of
12 commerce. Salzmann Decl. ¶6, Ex. D (Kim 166:18-167:20); Kim Decl. ¶6; Choi Decl.
13 ¶¶4-10).

14 28. Ms. Song, acting on behalf of Plaintiffs and under the direction of Ms.
15 Kim, subsequently entered into an agreement with Phoenix Fibers relating to the
16 donation of second-quality MISS ME and ROCK REVIVAL denim products, which
17 were to be destroyed and converted into shoddy fiber. Salzmann Decl. ¶6, Ex. D (Kim
18 14:1-9); ¶8, Ex. F (Song 24:4-9); Kim Decl. ¶¶9-12; Choi Decl. ¶¶8, 10).

19 29. On November 3, 2011, Ms. Song contacted Bonded Logic regarding its
20 business of converting denim products into shoddy fiber, and was referred to Matt
21 Graham at Phoenix Fibers, Bonded Logic's affiliate. That same day, Ms. Song spoke
22 with Mr. Graham, who, she understood, had the authority to act on behalf of Phoenix
23 Fibers, about starting a program whereby Plaintiffs would ship their damaged,
24 unfinished, obsolete, returned or otherwise second-quality MISS ME and ROCK
25 REVIVAL denim products to Phoenix Fibers for destruction and recycling into shoddy
26 fiber. (Salzmann Decl. ¶14, Ex. L (SP/RCV005530-5531)).

27 30. On November 4, 2011, Mr. Graham sent Ms. Song an email labeled
28 "High" importance explaining Phoenix Fibers' shredding services and capabilities.

1 Mr. Graham made a point of explaining that “[i]f necessary, [Phoenix Fibers] can
2 remove the tags, buttons and zippers. There is no charge for our recycling service.”
3 (Salzmann Decl. ¶16, Ex. N (SP/RCRV005538-5539) (emphasis added)).

4 31. If the resale of such products as “credential” had been part of the
5 discussion between Mr. Graham and Ms. Song, there would have been no reason to
6 remove “the tags, buttons and zippers” from such products. Rather, those items—tags,
7 buttons and zippers—would only need to be removed if the products were being
8 recycled into shoddy fiber, as the parties contemplated. (Salzmann Decl. ¶38, Ex. JJ
9 (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”) (explaining that the first
10 step in the shredding process is “a proprietary process that removes all buttons, zippers
11 and tags”)).

12 32. Later that day, in response to Mr. Graham’s November 4, 2011 email, Ms.
13 Song inquired: “What will be the next step? Is there paperwork to fill out, or do we
14 just start by sending the shipment to you?” (Salzmann Decl. ¶16, Ex. N
15 (SP/RCRV005538-5539)). That same day, Mr. Graham advised that “[t]here is
16 nothing to fill out from our end.” (Salzmann Decl. ¶17, Ex. O (SP/RCRV005542-
17 5543)).

18 33. On November 15, 2015, Mr. Graham responded to an email from Ms.
19 Song inquiring as to shipping logistics, and agreed to pass along information regarding
20 some of the carriers that Phoenix Fibers worked with. In conclusion, Mr. Graham
21 stated “[t]here’s not much else needed. **We will receive the material, schedule it for**
22 **destruction and away we go!** I’ll call you this morning to confirm this email.”
23 (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).

24 34. Throughout her discussions with Phoenix Fibers, Ms. Song reported back
25 to Ms. Kim, Mr. Choi and Steve Kim, Plaintiffs’ then-COO, her superiors who also
26 worked for both Sweet People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24;
27 20:1-11; 20:25-21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N
28

1 (SP/RCV005538-5539), ¶17, Ex. O (SP/RCV005542-5543); Kim Decl. ¶9; Choi
2 Decl. ¶8).

3 35. Ms. Kim saw written communications between Ms. Song and Mr.
4 Graham wherein Mr. Graham represented that Phoenix Fibers would destroy Plaintiffs'
5 second-quality denim products and convert them into shoddy fiber (Salzmann Decl. ¶6,
6 Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that “[w]e did require that the
7 items be destroyed and recycled” (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)).

8 36. Moreover, Ms. Kim understood that “during the recycling process, the
9 items would naturally be destroyed as they were made into shoddy fiber.” (Salzmann
10 Decl. ¶6, Ex. D (Kim 27:20-28:4; 39:5-22); Kim Decl. ¶13).

11 37. Based on her contemporaneous discussions with Ms. Song regarding Ms.
12 Song's conversations with Mr. Graham, Ms. Kim understood that Plaintiffs had
13 conditioned their agreement to provide Phoenix Fibers with their second-quality MISS
14 ME and ROCK REVIVAL denim products on Phoenix Fibers' agreement to convert
15 all such products into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); Kim
16 Decl. ¶10). Mr. Choi had the same understanding. (Choi Decl. ¶¶8, 10).

17 38. Based on her contemporaneous understanding of Ms. Song's oral and
18 written communications with Phoenix Fibers, namely, Mr. Graham's representation
19 that Phoenix Fibers would “destroy” Plaintiffs' products and convert them into shoddy
20 fiber, and his statement that Phoenix Fibers did not require a writing to memorialize
21 the parties' understanding, Ms. Kim was satisfied that a written agreement with
22 Phoenix Fibers was not necessary. (Salzmann Decl. ¶6, Ex. D (Kim 34:4-12; 37:22-
23 38:10); Kim Decl. ¶12).

24 39. Thereafter, Plaintiffs made shipping arrangements with their own carrier,
25 and on November 22, 2011, Ms. Song contacted Mr. Graham to advise him that
26 Plaintiffs were ready to make their first delivery of denim products to Phoenix Fibers
27 for recycling into shoddy fiber on November 29, 2011. In that same email, Ms. Song
28 asked Mr. Graham to send over “any tax id's or documents for tax exemption or leed

1 [Leadership in Energy and Environmental Design] credit.” (Salzmann Decl. ¶19, Ex.
2 Q (SP/RCRV005570)).

3 40. Mr. Graham responded to Ms. Song’s inquiry by email dated December 5,
4 2011, explaining that “Phoenix Fibers, Inc. is a for-profit recycler and cannot legally
5 offer a tax credit for our service.” Mr. Graham went on to explain what happens to the
6 denim products Phoenix Fibers received from Sweet People and RCRV: “*The product*
7 *we receive may be recycled into any number of products. This could range from*
8 *house, automobile or appliance insulation to prison mattresses.... There is also a*
9 *certain portion that cannot be used, such as metal pieces in the buttons and zippers.*
10 *These are removed and recycled separately.*” (Salzmann Decl. ¶20, Ex. R
11 (SP/RCRV005583-5584) (emphasis added)).

12 41. Ms. Song understood that Plaintiffs and Phoenix Fibers had reached an
13 agreement with respect to the shredding of Plaintiffs’ denim products into shoddy fiber
14 before any products were shipped to Phoenix Fibers, and that Plaintiffs’ executive
15 management, and Phoenix Fibers’ General Manager, had approved the agreement.
16 (Salzmann Decl. ¶8, Ex. F (Song 28:10-29:3; 58:4-60:3; 64:3-8; 65:21-66:3; 67:11-24;
17 77:3-24; 85:11-86:1); *see also* Choi Decl. ¶8).

18 42. When asked at her deposition for her understanding of the agreement
19 between Plaintiffs and Phoenix Fibers at the time the first shipment of Plaintiffs’
20 products was made to Phoenix Fibers, Ms. Song stated:

21 My understanding was that we would send the inventory that
22 we needed to -- that we wanted to use as part of our -- one of
23 our green initiative programs. *Phoenix Fibers would break*
24 *down the inventory sent to them, shred it and create insulation*
25 *that they would pass along to Bonded Logic*, who insulated
26 houses in need. (Salzmann Decl. ¶8, Ex. F (Song 67:11-24;
27 28:10-29:3) (emphasis added)).

1 43. There was never any discussion between Ms. Song and Mr. Graham
2 regarding Phoenix Fibers' recycling of Plaintiffs' denim products in any other manner,
3 including the sale of such products as credential or otherwise. The term "credential"
4 does not appear in any of the communications between Ms. Song and Mr. Graham.

5 44. Ms. Kim and Mr. Choi understood, in November 2011, that there was a
6 contract between Phoenix Fibers, on the one hand, and Plaintiffs, on the other hand,
7 whereby (a) Plaintiffs would deliver unfinished, damaged and otherwise second-
8 quality MISS ME and ROCK REVIVAL denim products to Phoenix Fibers' Chandler,
9 Arizona facility, at no cost to Phoenix Fibers, and (b) Phoenix Fibers would shred such
10 products into shoddy fiber, which would then be used by Phoenix Fibers' affiliate,
11 Bonded Logic, to manufacture environmentally friendly products such as insulation.
12 (Salzmann Decl. ¶6, Ex. D (Kim 33:24-34:3); Kim Decl. ¶¶12, 14; Choi Decl. ¶¶8, 10).

13 45. By email dated January 27, 2012, Mr. Graham confirmed to Ms. Song that
14 Phoenix Fibers had received two additional loads of Plaintiffs' products, and stated
15 that "Phoenix Fibers is very happy to be working with your company." (Salzmann
16 Decl. ¶21, Ex. S (SP/RCV005617)).

17 46. Thereafter, on March 8, 2012, after Plaintiffs had already shipped
18 multiple tractor-trailer loads of MISS ME and ROCK REVIVAL denim products to
19 Phoenix Fibers for destruction and recycling into shoddy fiber, Ms. Song told Mr.
20 Graham that "it would be nice to show the executives pictures of what you guys do
21 with the denim and also show employees the insulation we make for the houses," and
22 asked if Mr. Graham if he could provide a sample. (Salzmann Decl. ¶22, Ex. T
23 (SP/RCV005624)).

24 47. That same day Mr. Graham responded, stating that he would send Ms.
25 Song "samples of the final product" that day. Hours later, Ms. Song responded to Mr.
26 Graham and further requested that he send "some pictures of the houses that we are
27 insulating", and inquired as to the name of the company to which Phoenix Fibers was
28 distributing the insulation. (Salzmann Decl. ¶23, Ex. U (SP/RCV005628)).

1 48. Mr. Graham promptly provided the following response: “***Phoenix Fibers***
 2 ***converts the jeans into fiber that gets sent to our affiliate company, Bonded Logic***
 3 which in turn, manufactures the end products. We don’t get involved with the actual
 4 distribution of the material. I would direct you to their web site for additional
 5 information. www.bondedlogic.com.” (Salzmann Decl. ¶24, Ex. V (SP/RCRV005629)
 6 (emphasis added)).

7 49. Thereafter, Ms. Song received a sample of Bonded Logic’s UltraTouch
 8 Denim insulation from Phoenix Fibers. (Salzmann Decl. ¶25, Ex. W
 9 (SP/RCRV000072)). Eric Choi was so proud of Plaintiffs’ partnership with Phoenix
 10 Fibers, and of having found an environmentally sound solution for the disposal of
 11 Plaintiffs’ second-quality products, that Plaintiffs prominently displayed the samples in
 12 the conference rooms at Plaintiffs’ headquarters, as an examples of the companies’
 13 commitment to the environment. (Choi Decl. ¶ 9). A photograph of one such display
 14 case appears below:



21 (Choi Decl. ¶9; Salzmann Decl. ¶25, Ex. W (SP/RCRV000072)).

22 50. Later that month, on March 29, 2012, Mr. Graham visited Plaintiffs’ Los
 23 Angeles, California facility, and met with Lisa Song and Steve Kim, Sweet People’s
 24 then-COO. (Salzmann Decl. ¶26, Ex. X (SP/RCRV005630-5639)).

25 51. Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms.
 26 Song following up on their March 29, 2012 in-person meeting. In his email, Mr.
 27 Graham wrote: “***Some of our new machinery I told you about has just arrived. Once***

1 *we have it set up and running, I will send you a video of us running your jeans.”*

2 (Salzmann Decl. ¶27, Ex. Y (SP/RCV005640) (emphasis added)).

3 52. Once Plaintiffs reached an agreement with Phoenix Fibers, in November
4 2011, for the shredding and recycling of their second-quality denim products into
5 shoddy fiber, Plaintiffs began importing their unfinished or second-quality apparel
6 products from their Asian factories for ultimate shipment to Phoenix Fibers, rather than
7 having them incinerated by the factories. This involved a significant expense, but it
8 was an expense Plaintiffs were willing to incur in order to dispose of their second-
9 quality denim products in an environmentally safe manner. (Salzmann Decl. ¶6, Ex. D
10 (Kim 98:24-100:10); Kim Decl. ¶14).

11 53. Plaintiffs did not believe it was necessary to request certificates of
12 destruction from Phoenix Fibers for the second-quality goods they had donated to
13 Phoenix Fibers for that purpose, because they “assumed that the goods were being
14 recycled [into shoddy fiber] as [they] were told they were.” (Salzmann Decl. ¶6, Ex. D
15 (Kim 168:12-19; 26:23-28:5; 39:5-22); Kim Decl. ¶13; Choi Decl. ¶11).

16 54. Over the next four years, during the period November 2011 through
17 September 2015, Plaintiffs donated hundreds of thousands of pounds of second-quality
18 MISS ME and ROCK REVIVAL denim products to Phoenix Fibers for shredding into
19 shoddy fiber. It cost Plaintiffs approximately \$1,000 per shipping container to
20 transport MISS ME and ROCK REVIVAL denim products from their facility in Los
21 Angeles, California to Phoenix Fibers’ facility in Chandler, Arizona. (Kim Decl. ¶15).

22 55. Prior to this litigation, Mr. Kean was not aware of any of Mr. Graham’s
23 communications with Ms. Song (Salzmann Decl. ¶5, Ex. C (Kean 80:3-6)), and did not
24 know when Plaintiffs first started to deliver MISS ME and ROCK REVIVAL products
25 to Phoenix Fibers (Salzmann Decl. ¶5, Ex. C (Kean 64:10-12)).

26 56. Phoenix Fibers has made no attempt to locate Mr. Graham in connection
27 with this litigation (Salzmann Decl. ¶5, Ex. C (Kean 34:1-3)), and further claims that
28 Mr. Graham “maliciously destroyed” all of his emails when he was terminated in 2013

1 because Phoenix Fibers “couldn’t afford his position” (Salzmann Decl. ¶5, Ex. C
2 (Kean 30:6-11; 31:7-22)).

3 **D. Phoenix Fibers’ Sale of MISS ME and ROCK REVIVAL Denim
4 Products to U.S. General**

5 57. Although it was uncommon for customers purchasing credential from
6 Phoenix Fibers to visit Phoenix Fibers’ warehouse to select such credential (Salzmann
7 Decl. ¶5, Ex. C (Kean 17:6-14)), starting in 2015, Kamel Mroueh, the President of
8 Defendant U.S. General Export, Inc. (“U.S. General”), visited Phoenix Fibers’
9 warehouse on multiple occasions to select credential for purchase. During these visits,
10 Mr. Johnson would accompany Mr. Mroueh as he walked the warehouse floor and
11 selected pallets of denim products that he wanted to purchase (Salzmann Decl. ¶4, Ex.
12 B (Johnson 34:2-10)).

13 58. Mr. Johnson concedes that on a number of occasions in 2015, Mr. Mroueh
14 selected pallets of second-quality MISS ME and ROCK REVIVAL denim products.
15 Mr. Johnson specifically recalls Mr. Mroueh selecting these pallets because the boxes
16 contained on those pallets clearly displayed the Sweet People and/or RCRV business
17 names, and/or the MISS ME and/or ROCK REVIVAL trademarks and logos.
18 (Salzmann Decl. ¶4, Ex. B (Johnson 39:13-16; 71:5-14)).

19 59. Mr. Johnson signed the Bill of Lading that corresponded with a Packing
20 List for certain second-quality MISS ME and ROCK REVIVAL denim products
21 Phoenix Fibers sold to U.S. General in May 2015. The Packing List was filled out by
22 a Phoenix Fibers employee, and recorded the sale of “Miss Me 3,473 lbs” and “RR
23 [Rock Revival] 3,294.” (Salzmann Decl. ¶4, Ex. B (Johnson 82:8-19; 84:11-85:8;
24 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). While this document was
25 created by Phoenix Fibers, neither it, nor any other transactional document relating to
26 the multiple sales of pallets of MISS ME and ROCK REVIVAL denim products that
27 Mr. Johnson brokered on Phoenix Fibers’ behalf, have been produced in discovery by
28 Phoenix Fibers.

1 60. Prior to Phoenix Fibers' sales of pallets of MISS ME and ROCK
2 REVIVAL denim products to U.S. General in 2015, Phoenix Fibers concedes that all
3 of the MISS ME and ROCK REVIVAL denim products that Plaintiffs donated to
4 Phoenix Fibers were either recycled into shoddy fiber, or retrieved by Plaintiffs in
5 December 2015. (Johnson Decl. ¶¶9, 17).

6 61. Mr. Johnson cannot recall any other instance where Phoenix Fibers sold
7 denim products that a brand owner had delivered to it free of charge as credential.
8 (Salzmann Decl. ¶4, Ex. B (Johnson 64:16-22; 41:23-42:1)).

9 **E. Plaintiffs Discover Large Quantities of Second-Quality MISS ME and**
10 **ROCK REVIVAL Denim Products In Secondary Channels of Trade**

11 62. In or around the summer of 2015, Plaintiffs began to receive complaints
12 from their sales representatives, authorized retail accounts, and others, regarding the
13 availability of second-quality MISS ME and ROCK REVIVAL denim products for
14 online and wholesale purchase. (Salzmann Decl. ¶6, Ex. D (Kim 106:25-107:11;
15 108:10-25; 67:2-13); Kim Decl. ¶16).

16 63. Thereafter, Ms. Kim oversaw the purchase of approximately 9,000 units
17 of second-quality MISS ME and ROCK REVIVAL denim products from certain
18 resellers who were selling such goods on eBay and Facebook. Upon examination of
19 the products, Ms. Kim and others within the companies were able to determine that
20 such products had previously been delivered to Phoenix Fibers for shredding and
21 recycling into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 108:22-109:20; 115:18-
22 116:12); Kim Decl. ¶17).

23 **F. Plaintiffs Contact Phoenix Fibers Regarding the Availability of**
24 **Plaintiffs' Products in Secondary Channels of Trade, and Phoenix**
25 **Fibers Fabricates a Story to Cover Up Its Sales of Such Products**

26 64. In or around the last week of October 2015, Ms. Kim called Mr. Johnson,
27 Phoenix Fibers' Plant Manager, to inquire as to how Phoenix Fibers was storing
28 Plaintiffs' second-quality MISS ME and ROCK REVIVAL denim products before

1 shredding them into shoddy fiber. During that call, Mr. Johnson explained to me that
 2 Plaintiffs' goods were received and placed in a secure cage until they were ready to be
 3 shredded, at which time they would be removed from the secure cage and shredded
 4 into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 148:19-149:8); Kim Decl. ¶18).

5 65. Thereafter, on October 27, 2015, Ms. Kim sent an email to Mr. Kean
 6 stating that an issue had come up that she would like to discuss with him at his earliest
 7 convenience. (Salzmann Decl. ¶33, Ex. EE (PHX000005)).

8 66. Ms. Kim subsequently spoke with Mr. Kean and advised him that
 9 Plaintiffs "had found goods [they] believed were possibly coming from his location,
 10 that had been sent there for destruction and recycling." In response, Mr. Kean stated
 11 that he would look into it, and mentioned the possibility that there may have been
 12 "leakage" (*i.e.*, theft) from the Phoenix Fibers warehouse. Specifically, Mr. Kean
 13 explained that on occasion, the cage where Plaintiffs' products were stored would be
 14 full, and certain products would be left outside of the cage, thus being susceptible to
 15 theft. At the end of the call, Mr. Kean referred Ms. Kim to Mr. Johnson, who, he
 16 stated, would be able to answer Ms. Kim's questions regarding security issues and the
 17 possible "leakage" of Plaintiffs' products from Phoenix Fibers' warehouse. (Salzmann
 18 Decl. ¶6, Ex. D (Kim 145:20-148:3); Kim Decl. ¶¶19-20).

19 67. At no time during Ms. Kim's call with Mr. Kean, or at any time thereafter,
 20 did Mr. Kean state that Phoenix Fibers had sold Plaintiffs' second-quality MISS ME
 21 and ROCK REVIVAL denim products to anyone as credential, nor did he state that it
 22 was Phoenix Fibers' position under the parties' agreement that Phoenix Fibers was
 23 entitled to sell Plaintiffs' products as credential or otherwise. (Kim Decl. ¶21).

24 68. Later that same day, Ms. Kim called Mr. Johnson and told him what she
 25 had previously explained to Mr. Kean, namely, that Plaintiffs were seeing significant
 26 quantities of second-quality MISS ME and ROCK REVIVAL denim products being
 27 offered for sale in secondary channels of trade, and that Plaintiffs had examined these
 28 products and believed that they had previously been delivered to Phoenix Fibers for

1 destruction and recycling into shoddy fiber. In response, Mr. Johnson acknowledged
2 the possibility that Plaintiffs' products had "leaked" from Phoenix Fibers' warehouse,
3 stated Phoenix Fibers was adding security cameras in its warehouse, and further stated
4 that he would personally investigate the issue and report back to Ms. Kim. (Salzmann
5 Decl. ¶6, Ex. D (Kim 151:15-152:24); Kim Decl. ¶22).

6 69. Mr. Johnson engaged in these conversations with Ms. Kim knowing full
7 well that he was lying to her, and that, in particular, Phoenix Fibers had sold a
8 substantial number of pallets of MISS ME and ROCK REVIVAL products to Mr.
9 Mroueh of U.S. General only months earlier:

10 Q. Okay. And during that initial conversation, did you advise Ms. Kim
11 that Phoenix Fibers had been selling its products to Mr. Mroueh?

12 A. No.

13 Q. But you knew that that was the case at that time; is that right?

14 A. Yes. (Salzmann Decl. ¶4, Ex. B (Johnson 100:23-101:4; *see also*
15 35:2-8; 70:25-71:10; 99:19-101:8)).

16 70. At no time during Ms. Kim's conversation with Mr. Johnson, or at any
17 time thereafter, did Mr. Johnson disclose the fact he had personally overseen the sale
18 of many pallets of second-quality MISS ME and ROCK REVIVAL denim products to
19 Defendant U.S. General, or state that it was Phoenix Fibers' position that Phoenix
20 Fibers was entitled to sell Plaintiffs' products to anyone as credential or otherwise.
21 (Kim Decl. ¶23).

22 71. Mr. Johnson testified that, notwithstanding his failure to so advise Ms.
23 Kim, he "probably" first advised Mr. Kean that he had overseen the sale of pallets of
24 MISS ME and ROCK REVIVAL products to Mr. Mroueh at U.S. General "right after
25 we were notified" by Plaintiffs—*i.e.*, in or around October 27, 2015. (Salzmann Decl.
26 ¶4, Ex. B (Johnson 103:23-104:5; 106:12-18)).

27 72. Mr. Kean, however, was unable to recall when, or in what context, Mr.
28 Johnson first told him that Mr. Johnson had overseen the sale of pallets of MISS ME

1 and ROCK REVIVAL products to Mr. Mroueh at U.S. General (Salzmann Decl. ¶5,
2 Ex. C (Kean 10:17-22; 12:7-16)), but believes that the conversation must have taken
3 place prior to May 18, 2016, the date on which Plaintiffs' First Amended Complaint
4 was filed:

5 Q. Well, do you recall whether or not you had that conversation with
6 Mr. Johnson before the complaint was filed in this case?

7 A. I don't recall.

8 Q. Okay. Do you recall whether or not you had that conversation with
9 Mr. Johnson before the answer was filed?

10 A. I don't recall. I don't know when the answer was filed, so I'd need
11 to look at a document.

12 Q. March 29th, 2016.

13 A. I don't recall.

14 Q. Okay. How about as of May 18th, 2016?

15 A. I would make an assumption, yes, I had spoken to him by May.
16 (Salzmann Decl. ¶5, Ex. C (Kean 42:10-22)).

17 73. After Mr. Johnson advised Mr. Kean that he had overseen Phoenix Fibers'
18 sale of an unknown number of pallets of MISS ME and ROCK REVIVAL denim
19 products to Mr. Mroueh at U.S. General, there was never any discussion between them
20 as to whether or not Phoenix Fibers should advise Plaintiffs that it had resold their
21 products. (Salzmann Decl. ¶4, Ex. B (Johnson 107:22-25)). In fact, there was no
22 further discussion between Mr. Johnson and Mr. Kean about this issue until Phoenix
23 Fibers was preparing its discovery responses in this action in late May 2016.
24 (Salzmann Decl. ¶4, Ex. B (Johnson 109:24-110:4)).

25 74. Instead, Mr. Kean and Phoenix Fibers continued to ignore the fact that
26 Mr. Johnson, Phoenix Fibers' Plant Manager, had personally overseen the sale of an
27 unknown number of pallets of MISS ME and ROCK REVIVAL products to Mr.

1 Mroueh at U.S. General, and had withheld such information from Plaintiffs when Ms.
2 Kim directly raised the issue.

3 75. Although Mr. Johnson had advised Ms. Kim in late October or early
4 November 2015 that he would look into the possibility that certain MISS ME and
5 ROCK REVIVAL denim products had been stolen from Phoenix Fibers warehouse,
6 and then report back to her, Ms. Kim received no further information or response of
7 any kind from Mr. Johnson or Mr. Kean. (Salzmann Decl. ¶6, Ex. D (Kim 155:1-6);
8 Kim Decl. ¶24).

9 76. When Mr. Johnson spoke to Mr. Kean about his conversation with Ms.
10 Kim, he advised Mr. Kean that he mentioned to Ms. Kim that “he would immediately
11 look into any theft issues.” Mr. Kean recalls Mr. Johnson looking into the issue of
12 theft, but Mr. Johnson did not report back to him to advise what he had determined.
13 (Salzmann Decl. ¶5, Ex. C (Kean 8:14-9:9)).

14 77. In the weeks that followed, Plaintiffs continued to see increasing numbers
15 of second-quality MISS ME and ROCK REVIVAL denim products being made
16 available online for purchase in secondary channels of trade. Finally, in mid-
17 November 2015, Ms. Kim instructed Plaintiffs’ outside counsel to contact Mr. Kean, in
18 order to ensure that Plaintiffs’ donated products were being properly handled and
19 secured prior to being shredded and recycled into shoddy fiber. At the time, Plaintiffs
20 had no idea that these products had found their way out of Phoenix Fibers’ warehouse
21 in any way other than through “leakage” (*i.e.*, theft). (Kim Decl. ¶25).

22 78. The November 17, 2015 letter from Plaintiffs’ counsel further stated that
23 Plaintiffs desired to “resolve th[e] matter in an amicable and business-like manner” so
24 that the parties could “continue their valued relationship,” and asked that Phoenix
25 Fibers provide Plaintiffs with a written protocol for securely handling their MISS ME
26 and ROCK REVIVAL products going forward. (Salzmann Decl. ¶34, Ex. FF
27 (PHX001040-1041)).

1 79. On December 3, 2015, Plaintiffs' outside counsel received a response to
 2 its November 17, 2015 letter from Phoenix Fibers' then-outside counsel, Charles
 3 Wirken, Esq., of the firm of Gust & Rosenfeld. Mr. Wirken's December 3, 2015 letter,
 4 on which Mr. Kean was copied, denied that Phoenix Fibers had any knowledge of
 5 Plaintiffs' products being "removed from the main warehouse floor," by way of sale of
 6 otherwise, and stated that if any such products had been removed, "***it was done***
 7 ***without the knowledge and consent of Phoenix Fibers.***" (Salzmann Decl. ¶35, Ex.
 8 GG (PHX001042–001043) (emphasis added); Kim Decl. ¶26).

9 80. Mr. Wirken's letter further advised that Phoenix Fibers would no longer
 10 accept the donation of Plaintiffs' MISS ME and ROCK REVIVAL denim products.
 11 As for the inventory of Plaintiffs' products that Phoenix Fibers had on hand, Mr.
 12 Wirken advised that Phoenix Fibers "***will either process them as usual, taking them***
 13 ***from the 'cage' and processing them through the machinery on the warehouse floor,***
 14 or allow [Plaintiffs] to reclaim the unprocessed products at their expense." (Salzmann
 15 Decl. ¶35, Ex. GG (PHX001042–001043) (emphasis added); Kim Decl. ¶26). Once
 16 again, no mention was made that any of the goods in question had been sold as
 17 credential, in direct violation of the parties' agreement.

18 81. In particular, at no point did Phoenix Fibers or its then-counsel, Mr.
 19 Wirken, (a) disclose to Plaintiffs the fact that Mr. Johnson, Phoenix Fibers' Plant
 20 Manager, had personally overseen Phoenix Fibers' sale of an unknown quantity of
 21 MISS ME and ROCK REVIVAL denim products to Mr. Mroueh at U.S. General, or
 22 (b) take the position that Phoenix Fibers had the right to resell Plaintiffs' denim
 23 products as credential. Salzmann Decl. ¶35, Ex. GG (PHX001042–001043); ¶37, Ex.
 24 II (SP/RCV000056-60)).

25 82. By letter dated December 7, 2015, Plaintiffs' outside counsel requested
 26 that Mr. Wirken advise as to "the volume of unprocessed Sweet People and/or RCRV
 27 products currently maintained" at Phoenix Fibers' facility, so that Plaintiffs could
 28

1 assess the possibility of reclaiming their unprocessed products. (Salzmann Decl. ¶36,
2 Ex. HH (SP/RCRV000055)).

3 83. The following day, Mr. Wirken advised Plaintiffs' outside counsel that
4 Phoenix Fibers possessed 125 pallets of Plaintiffs' products, with an estimated weight
5 of 125,000 to 130,000 pounds. Mr. Wirken further advised that "[t]hese numbers are
6 decreasing ***as the product is processed.***" Once again, no mention was made that any
7 products had been or were being resold as credential, or that anything else was being
8 done with them other than shredding them for processing into shoddy fiber. That same
9 day, Plaintiffs' outside counsel advised Mr. Wirken that Plaintiffs would reclaim all
10 remaining inventory, and requested that Phoenix Fibers cease processing Plaintiffs'
11 products. In response, Mr. Wirken represented that the remaining inventory
12 represented "***whatever your clients sent [to Phoenix Fibers] and was not previously
13 processed.***" (Salzmann Decl. ¶37, Ex. II (SP/RCRV000056-60) (emphasis added)).

14 84. Mr. Johnson testified that the term "processed," as used by Phoenix
15 Fibers, refers to denim "put on the line to be turned into shoddy." (Salzmann Decl. ¶4,
16 Ex. B (Johnson 21:20-25; 76:15-25)).

17 85. Mr. Wirken's representations, however, were not true or accurate, given
18 that Mr. Johnson, Phoenix Fibers' Plant Manager, had personally overseen Phoenix
19 Fibers' sale of an unknown quantity of MISS ME and ROCK REVIVAL denim
20 products to Mr. Mroueh at U.S. General. (Salzmann Decl. ¶4, Ex. B (Johnson 39:13-
21 16; 71:5-14)).

22 86. Shortly thereafter, in mid-December 2015, Plaintiffs reclaimed
23 approximately 125 pallets of their unprocessed/unsold second-quality MISS ME and
24 ROCK REVIVAL denim products from Phoenix Fibers' warehouse in Chandler,
25 Arizona. (Salzmann Decl. ¶6, Ex. D (Kim 25:17-26:11); Kim Decl. ¶27).

26 87. Once the products were returned to Plaintiffs' warehouse in Los Angeles,
27 California, at Ms. Kim's direction Plaintiffs' warehouse staff conducted a review of
28 the reclaimed products. That review revealed that among the reclaimed goods were

1 denim products that Plaintiffs had delivered to Phoenix Fibers for recycling into
2 shoddy fiber as early as 2012. (Salzmann Decl. ¶6, Ex. D (Kim 25:17-26:11); Kim
3 Decl. ¶28).

4 88. In addition, many of the reclaimed boxes of MISS ME and ROCK
5 REVIVAL denim products had been cut open in one corner, and had apparently been
6 rummaged through. After viewing certain of these cut-open boxes, it was Ms. Kim's
7 belief that the boxes were opened in this manner to determine the quality and/or
8 saleability of the MISS ME and ROCK REVIVAL denim products contained inside.
9 (Salzmann Decl. ¶6, Ex. D (Kim 181:18-25); Kim Decl. ¶29).

10 89. Realizing that they had received no forthright responses from Phoenix
11 Fibers about how their second-quality products were finding their way out of Phoenix
12 Fibers' warehouse, in or around early December 2015 Plaintiffs hired, at significant
13 expense, a private investigator to help identify the source of the second-quality MISS
14 ME and ROCK REVIVAL denim products that were continuing to flood secondary
15 channels of trade. (Kim Decl. ¶30).

16 90. In an effort to mitigate the incalculable harm to the MISS ME and ROCK
17 REVIVAL brands that was being caused by the widespread availability of second-
18 quality MISS ME and ROCK REVIVAL denim products, which Plaintiffs had always
19 taken strict measures to prevent, Ms. Kim authorized Plaintiffs' investigators to
20 purchase as many of such products as possible. (Kim Decl. ¶31).

21 91. Between December 30, 2015 and February 9, 2016 (the day before
22 Plaintiffs commenced this action), Plaintiffs' investigators purchased over 29,000 units
23 of second-quality MISS ME and ROCK REVIVAL denim products from Defendants
24 SAC International Traders, Inc., Shaukat Ali Chohan, Comak Trading, Inc. and Lydia
25 Evilsa Terrazas Cho, at a cost of over \$190,000. Documents produced in discovery in
26 this action establish that these goods were sourced by these parties from Defendant
27 U.S. General Export, Inc. who, in turn, purchased them from Phoenix Fibers in sales
28 brokered by Mr. Johnson. (Kim Decl. ¶31).

1 92. To this day, as a direct result of Phoenix Fibers' conduct, second-quality
 2 MISS ME and ROCK REVIVAL denim products improperly sold by Phoenix Fibers
 3 are being offered for sale in secondary channels, and are continuing to be sold by
 4 downstream customers through eBay and social media platforms such as Facebook.
 5 Phoenix Fibers' inexplicable sale of these products, which Plaintiffs would never have
 6 authorized for distribution to consumers at any level, has caused irreparable harm to
 7 Plaintiffs and their MISS ME and ROCK REVIVAL brands. (Kim Decl. ¶32; Choi
 8 Decl. ¶¶12-13; Salzmann Decl. ¶31, Ex. CC (SP/RCRV001366-1367); ¶32, Ex. DD
 9 (SP/RCRV005756-5757)).

10 93. In its Answer to Plaintiffs' Complaint, filed on March 29, 2016—nearly
 11 five months after Ms. Kim first contacted Mr. Kean, and long after Mr. Johnson
 12 conceded that he “probably advised” Mr. Kean of the sale of Plaintiffs’ products to
 13 U.S. General—Phoenix Fibers repeatedly and expressly denied Plaintiffs’ allegations,
 14 stating that “***Defendant lacks any record of Defendant’s donated goods being
 distributed or sold by Defendant in the same form as donated by Plaintiffs [i.e., as
 credential] and on that basis specifically denies such allegation.***” (Salzmann Decl.
 15 ¶11, Ex. I (Phoenix Fibers’ Answer) at ¶¶ 4-6, 32, 37, 41-42, 46-50, 58-65, 67-73, 75-
 16 79, 83-94 (emphasis added)).

17 94. On May 13, 2016—over six months after Ms. Kim first contacted Mr.
 18 Kean, and long after Mr. Johnson conceded that he “probably advised” Mr. Kean of his
 19 sale of Plaintiffs’ products to U.S. General—Phoenix Fibers served its Initial
 20 Disclosures. Those disclosures continued to perpetuate the charade that Phoenix
 21 Fibers had not resold Plaintiffs’ products, and identified no documents relating to, or
 22 witnesses with knowledge of such sales of Plaintiffs’ products, despite the fact that Mr.
 23 Johnson, the individual who had personally overseen the sale of pallets of Plaintiffs’
 24 MISS ME and ROCK REVIVAL products to U.S. General, was identified by Phoenix
 25 Fibers as a witness with knowledge of relevant facts. (Salzmann Decl. ¶43, Ex. OO
 26
 27
 28

1 (Defendant Phoenix Fibers Initial Disclosures)). To date, Phoenix Fibers has not
2 amended its Initial Disclosures.

3 95. Five days later, on May 18, 2016, Plaintiffs filed their First Amended
4 Complaint. (Salzmann Decl. ¶12, Ex. J (Plaintiffs' First Amended Complaint)).
5 Phoenix Fibers has not filed an answer to Plaintiffs' First Amended Complaint.

6 **G. Likelihood of Post-Sale Confusion**

7 96. Observers of Plaintiffs' second-quality products, initially sold into
8 secondary trade channels by Phoenix Fibers, being worn by purchasers of such
9 products in the post-sale marketplace, are likely to be confused and believe that such
10 inferior quality products were authorized for sale by Plaintiffs as first-quality products.
11 (Choi Decl. ¶¶12-13; Kim Decl. ¶32).

12 **H. "Factual" Statements in the Declarations of Tod Kean and Steve
13 Johnson That Are Inconsistent with Their Deposition Testimony**

14 97. Phoenix Fibers did not have an operational website when the company
15 launched in July 2011, and Tod Kean does not know when the website went live,
16 stating at his deposition that he "would want to check the dates on the [Wayback]
17 machine." (Salzmann Decl. ¶5, Ex. C (Kean 101:5-25)). Had Mr. Kean checked the
18 Wayback Machine, he would have learned that the first screen capture of the
19 phxfibers.com website is from September 13, 2012, more than a year after Phoenix
20 Fibers commenced its business. (Salzmann Decl. ¶42, Ex. NN (printout of Wayback
21 Machine screen capture)). Moreover, Phoenix Fibers did not "purchase" Plaintiffs'
22 products, and when Mr. Kean was specifically asked how this statement—"The items
23 we do not use in our shredding process are resold to other recycling companies"—
24 which refers to the resale or reselling of products, related Phoenix Fibers' sale of
25 Plaintiffs' products, Mr. Kean was unable to identify any first or initial "sale" of
26 products by Plaintiffs that preceded Phoenix Fibers' "resale." (Salzmann Decl. ¶5, Ex.
27 C (Kean 102:1-23)).

1 98. Phoenix Fibers has produced no evidence to substantiate Mr. Kean's
 2 claim that the phxfibers.com website has been active "[s]ince [the company's]
 3 inception" in July 2011. (Kean Decl. ¶9).

4 99. When Mr. Johnson was asked at his deposition whether it was his
 5 understanding that "U.S. General Export is a recycling company," his response was "I
 6 have no idea." (Salzmann Decl. ¶4, Ex. B (Johnson 98:6-8)). Yet now, Mr. Johnson
 7 unequivocally states in his declaration that "U.S. General Exports [sic] ... is a clothing
 8 recycler," and downplays Phoenix Fibers' involvement in the shredding of denim
 9 products and their conversion into shoddy fiber. (Johnson Decl. ¶8).

10 100. When Mr. Johnson was asked at his deposition whether Phoenix Fibers
 11 was doing business with Kamel Mroueh, the owner of U.S. General, at the time he
 12 came on board as Plant Manager in September 2013, his response was "I honestly
 13 don't know, but I'm -- yeah, I don't know. I don't know when the relationship
 14 started." (Salzmann Decl. ¶4, Ex. B (Johnson 33:5-10)). However, Mr. Johnson now
 15 unequivocally states in his declaration that "[t]o my knowledge, based on my job and a
 16 review of records, Phoenix Fibers did not sell any credential to U.S. General prior to
 17 2013." (Johnson Decl. ¶8). Furthermore, whatever Phoenix Fibers "records" Mr.
 18 Johnson is referring to in his declaration have not been produced in this litigation.

19 101. When Mr. Johnson was asked at his deposition whether he knew how
 20 Phoenix Fibers was able to determine the dates of its sales of Plaintiffs' products to
 21 U.S. General, as disclosed in Phoenix Fibers' Responses to Sweet People's First Set of
 22 Interrogatories (*i.e.*, "between early Spring 2015 — early Fall 2015"), he testified that
 23 he did not know, and could not recall if he had discussed the range of those dates with
 24 Mr. Kean prior to the time Mr. Kean verified the accuracy of the response. (Salzmann
 25 Decl. ¶4, Ex. B (Johnson 92:25-93:7); ¶44, Ex. PP (Defendant Phoenix Fibers, Inc.'s
 26 Responses to First Set of Interrogatories From Plaintiff Sweet People Apparel, Inc.)).
 27 In his declaration, however, Mr. Johnson now states that "[b]ased on my review of
 28 Phoenix Fibers' records and my recollection, Phoenix Fibers sold certain products

1 donated by Sweet People and RCRV to U.S. General, as credential, in bulk, and by the
 2 pound beginning in 2015.” (Johnson Decl. ¶9). As for the “records” Mr. Johnson is
 3 referring to, at his deposition Mr. Johnson testified that Mr. Mroueh “always” paid in
 4 cash, and therefore the only transactional documents that would exist were handwritten
 5 sales slips that he would have prepared. (Salzmann Decl. ¶4, Ex. B (Johnson 37:18-
 6 19; 47:20-48:5)). It is therefore unclear what “Phoenix Fibers records” Mr. Johnson is
 7 referring to, as Phoenix Fibers has produced no such records relating to its sales of
 8 Plaintiffs’ denim products to U.S. General.

9 102. When Mr. Johnson was asked at his deposition if he had “a sense of the
 10 percentage of donated Miss Me and Rock Revival product that was converted into
 11 shoddy as opposed to sold,” his response was “I have no idea.” When further asked
 12 whether anyone at Phoenix Fibers would know the answer to that question, Mr.
 13 Johnson’s response was “No.” (Salzmann Decl. ¶4, Ex. B (Johnson 70:19-24)).
 14 However, Mr. Johnson now states definitively in his declaration that “[p]rior to 2015,
 15 items donated by Sweet People and RCRV were converted into shoddy fiber.”
 16 (Johnson Decl. ¶9).

17 **I. Plaintiffs Have Not Completed Certain Fact Discovery Required to
 18 Oppose Phoenix Fibers’ Motion, and Fact Discovery Remains Open
 19 For Two More Months**

20 103. Fact discovery in this action closes on March 13, 2017. (Salzmann Decl.
 21 ¶47).

22 104. Plaintiffs have diligently attempted to schedule the deposition of U.S.
 23 General since September 2016. Plaintiffs’ counsel first contacted U.S. General’s
 24 counsel, Eugene Alkana, on September 16, 2016, to inquire about scheduling the
 25 deposition of U.S. General’s President, Kamel Mroueh. That same day, Mr. Alkana
 26 advised that he believed that Mr. Mroueh “currently resides in the Congo,” that he
 27 would “talk to him about his travel plans” and would provide Plaintiffs’ counsel with
 28 an update during the week of September 26, 2016. (Salzmann Decl. ¶48).

1 105. Plaintiffs' counsel thereafter followed up with Mr. Alkana on September
 2 26, to again inquire as to Mr. Mroueh's availability, further stating: "To the extent Mr.
 3 Mroueh will not be returning to the U.S., we would like to depose Ms. [Nellie]
 4 Sanchez. Also we would like to depose an appropriate corporate representative(s) to
 5 address the topics set forth in the attached draft Rule 30(b)(6) notice. We will serve
 6 formal notices once we are able to work out dates." (Salzmann Decl. ¶49).

7 106. In response, on September 29, 2016, Mr. Alkana advised that Mr. Mroueh
 8 "will not return to the U.S. [until] June 2017," and offered to explore the possibility of
 9 conducting a video deposition of Mr. Mroueh from the Congo. After exploring this
 10 possibility, it was determined to be unfeasible, and on October 5, 2016, Plaintiffs'
 11 counsel sent an email to Mr. Alkana advising him of the same, and reiterating
 12 Plaintiffs' counsel's position that Plaintiffs "are entitled to depose a knowledgeable
 13 corporate representative of U.S. General (whether it is Mr. Mroueh or someone else) in
 14 California where U.S. General is registered to do business and maintains its principal
 15 place of business." (Salzmann Decl. ¶50, Ex. SS).

16 107. That same day (October 5, 2016), Plaintiffs' counsel served Plaintiffs'
 17 Rule 30(b)(6) notice of deposition on U.S. General, calling for the deposition to take
 18 place on October 28, 2016. (Salzmann Decl. ¶51, Ex. TT).

19 108. Thereafter, on October 14, 2016, U.S. General served Objections and
 20 Designations in response to Plaintiffs' Rule 30(b)(6) deposition notice, identifying Ms.
 21 Sanchez as U.S. General's corporate representative, and indicating that "[t]he date
 22 currently set for deposition is not acceptable as counsel for U.S. General is not
 23 available on that date," yet offering no alternative dates. (Salzmann Decl. ¶52).

24 109. On November 14, 2016, Plaintiffs' counsel sent an email to Mr. Alkana
 25 requesting that he provide "Ms. Sanchez's availability for deposition during the week
 26 of December 5." Having received no response from Mr. Alkana, Plaintiffs' counsel
 27 sent him another email on November 23, 2016, again requesting that he advise of Ms.
 28 Sanchez's availability for deposition during the week of December 5, 2016. That same

1 day, Mr. Alkana responded, stating only: “I will inquire.” Again, having not received
2 a further response from Mr. Alkana, Plaintiffs’ counsel sent him another email on
3 December 7, 2016 inquiring as to Ms. Sanchez’s availability. Mr. Alkana responded
4 the same day, stating “I will get dates for Ms. Sanchez and report to [you] on
5 Monday.” However, Mr. Alkana has yet to propose any dates for Ms. Sanchez’s
6 deposition. (Salzmann Decl. ¶53, Ex. UU).

7 110. Accordingly, despite Plaintiffs’ diligent efforts to schedule the Rule
8 30(b)(6) deposition of U.S. General, the party that most immediately purchased
9 Plaintiffs’ Donated Products from Phoenix Fibers—and therefore the party in the best
10 position to testify as to the representations made by Phoenix Fibers about such
11 products and sales—Plaintiffs have not yet been able to complete that important
12 discovery. (Salzmann Decl. ¶54).

13 111. Mr. Johnson has submitted a declaration in support of Phoenix Fibers’
14 motion wherein he characterizes the nature of U.S. General’s business (Johnson Decl.
15 ¶8), his communications with Mr. Mroueh (Johnson Decl. ¶¶10-12), and Phoenix
16 Fibers’ sale of MISS ME and ROCK REVIVAL products to U.S. General (Johnson
17 Decl. ¶¶9, 13-16).

18 112. To this date, Plaintiffs have not had the opportunity to inquire of a U.S.
19 General representative as to the veracity of those alleged communications. (Salzmann
20 Decl. ¶55).

21 113. Defendant Shaukat Ali Chohan, the owner of Defendant SAC
22 International Traders, Inc.—a party that purchased approximately 60,000 units of
23 MISS ME and ROCK REVIVAL products from Phoenix Fibers’ direct customer U.S.
24 General (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT 000028-33))—left the
25 United States in or around January or February 2016. (Salzmann Decl. ¶9, Ex. G
26 (Wolff 43:25-44:6; 101:13-102:15)).

27 114. The Clerk entered a default against Mr. Chohan in this case on March 28,
28 2016. (Salzmann Decl. ¶57).

1 115. Mr. Chohan operated his business in close partnership with Defendants
 2 Lydia Evilsa Terrazas Cho and Comak Trading, Inc., and collectively they engaged in
 3 the resale of MISS ME and ROCK REVIVAL products that SAC International Traders
 4 purchased from U.S. General. (Salzmann Decl. ¶9, Ex. G (Wolff 73:22-76:17); ¶45,
 5 Ex. QQ (Plaintiff Sweet People Apparel, Inc.'s First Set of Interrogatories Directed to
 6 Defendant Tiffany Alana Wolff); ¶46, Ex. RR (Wolff's Responses to RCRV's
 7 Interrogatories); ¶58).

8 116. Although the two individuals most directly involved in the distribution of
 9 MISS ME and ROCK REVIVAL products sold by Phoenix Fibers—Mr. Mroueh (U.S.
 10 General) and Mr. Chohan (SAC International Traders)—left the United States shortly
 11 following the commencement of this action, Ms. Cho, Mr. Chohan's associate from
 12 Comak Trading, remains in California. (Salzmann Decl. ¶59; ¶9, Ex. G (Wolff 43:25-
 13 44:6; 73:22-76:17; 101:13-102:15)).

14 117. Plaintiffs' counsel served a notice of deposition on Ms. Cho on November
 15 14, 2016, calling for her deposition to take place in December 9, 2016. Thereafter, on
 16 November 30, 2016, Plaintiffs' counsel sent an email to Ms. Cho requesting that she
 17 confirm her availability for deposition on December 9, 2016 as noticed. Having
 18 received no response from Ms. Cho, Plaintiffs' counsel sent an email to Ms. Cho and
 19 all counsel of record adjourning her deposition. (Salzmann Decl. ¶60, Ex. VV).

20 118. Thereafter, on December 6, 2016, Plaintiffs' counsel received a call from
 21 a representative of Ms. Cho, stating that she was in the process of attempting to retain
 22 new counsel for purposes of her deposition, and requesting that her deposition be
 23 further adjourned until January 2017. (Salzmann Decl. ¶61).

24 119. The depositions of U.S. General and Ms. Cho will be critical to providing
 25 the complete picture as to the nature and scope of Phoenix Fibers' relationship with
 26 U.S. General and Comak Trading, and other defendants up the chain, which is essential
 27 to the question whether Defendants are joint tortfeasors. In addition, this long-awaited
 28 discovery will provide important information about the manner in which Plaintiffs'

1 second-quality goods were and are being improperly distributed, including how
2 Phoenix Fibers presented them to U.S. General. (Salzmann Decl. ¶62).

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4 Dated: January 9, 2017

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